General Terms and Conditions on the Provision of Software via the Internet

The terms and conditions below apply to the customer's temporary access to certain software products of ifm electronic gmbh via the Internet. Deviating terms and conditions of the customer are expressly not recognised.

I.   Definitions

Order confirmation:	Written or electronic confirmation by the service provider in relation to the contractual services.
Cloud:	Servers contained in one (or more) data centre(s) not in proximity to the customer's site that allow software to be used and large volumes of data to be stored.
Cloud provider:	Company that provides and operates the cloud.
Customer:	Natural or legal person who commissions the service provider to provide the contractual services.
Service provider:	Company that provides IT services or IT infrastructure services itself or through third parties.
Software:	The computer program specified in the order confirmation.
Update:	New program version of the particular software used to eliminate errors found in the previous program version.
Upgrade:	New program version of the particular software containing new or improved functionalities of the software.
Point of transfer:	Router access point at the relevant data centre of the cloud provider.

II.   Subject matter of the contract

The subject matter of this contract is the provision of the software described in the order confirmation via the Internet. Use of such software takes place via an Internet connection at the router access point of the relevant data centre of the cloud provider. The customer can store and process data via the resources supplied by the service provider using the software if it so wishes. The order confirmation supplied by the service provider contains relevant details.

The service provider is entitled to implement updates and upgrades if technically necessary or useful. If this means functional limitations for the customer, the service provider will need to communicate this information with adequate advance notice.

Furthermore, the General Terms and Conditions for Software Maintenance shall apply to software maintenance (https://www.ifm.com/de/de/de/terms-of-service).

III. Registration

The customer will receive a personal account consisting of a user ID and password after completing the registration process. These login details may not be passed on. The customer itself is responsible for ensuring their safekeeping.

IV. Conditions for use

The customer itself must ensure that it has Internet access up to the point of transfer of the service provider so that it can accept and utilise the provider's service. To this extent, the service provider is not responsible for establishing and maintaining the data connection between the customer's IT systems and the point of transfer.

The customer bears sole responsibility for fulfilling the technical prerequisites specified in the product description.

V. Third-party software/open-source software

The software may contain components that are subject to special licensing terms of third parties or to an open-source licence. These parts and the applicable licence texts are listed separately in the respective product description provided that this is required by the relevant licences.

VI. Rights of use

The service provider grants the customer the non-exclusive, non-transferable and non-sublicensable right, restricted in time to the term of the contract, to use the software in accordance with the product description. The right of use allows for the user interface of the software to be displayed on the devices designated under the contract.

No further proprietary rights of use to the software are granted to the customer with this agreement.

The customer may not allow third parties to use the software unless the service provider gives its express written consent. Third parties also include group-affiliated companies vis-à-vis the customer.

VII. Availability of the software

The service provider ensures the availability of the software as described in the Service Level Agreement (https://www.ifm.com/de/de/de/terms-of-service).

Software availability may be impaired due to technical reasons that cannot be influenced by the service provider. These include, in particular, third-party actions that are not initiated at the request of the service provider, technical conditions of the Internet that the service provider cannot influence, and force majeure. The hardware/software and technical infrastructure used by the customer can also impact the services of the provider. To the extent that such circumstances influence the availability or functionality of the services rendered by the service provider, this shall have no effect on the contractual conformity of the services provided.

VIII. Remuneration

The remuneration amount and the payment conditions are based on the service provider's order confirmation**.**

If the customer is in default of payment by more than four weeks, the service provider shall be entitled to block access to the relevant software, having issued a prior warning and set a reasonable deadline, which is then not honoured by the customer. The service provider's payment claim shall not be affected by this blocking action. Access to the software shall be restored immediately once the outstanding payments have been received in full. The right to block access shall be available to the service provider as a milder alternative to its right to exercise extraordinary termination.

IX. Term

The term of the contract is based on the details contained in the service provider's order confirmation.

The right of extraordinary termination for good cause shall not be affected. Good cause includes in particular

(i)   the initiation of settlement or insolvency proceedings on the assets of the customer;

(ii)   breach of payment obligations by the customer despite being issued a warning and set reasonable deadline by the service provider, and still failing to honour it;

(iii)   breach on the part of the customer of its obligation to maintain an appropriate level of IT security from Clause XI of this agreement or non-installation or incorrect installation of security updates provided by the service provider within the meaning of Clause XV by the customer;

(iv)   breach of other key provisions of this contract, in particular if the customer continues to violate its obligations despite written warning.

X. Right to audit

The service provider and the cloud provider are entitled at all times to conduct an audit at the customer's site in order to check the contractual compliance of software use. The service provider and the cloud provider may commission third parties to perform this task.

XI. Obligations of the customer

The customer will support the service provider in the provision of the contractual services to a reasonable extent, and will do so in the following areas in particular:

(i)   Incident reporting

The customer shall report functional failures, disruptions and impairments of the software to the service provider without delay and in as precise terms as possible. More detailed information is contained in the General Terms and Conditions for Software Maintenance.

(ii)   Confidentiality of login details, preventing access by third parties

The customer must keep confidential the login details provided to it and must ensure that employees with access to this information do likewise. The service rendered by the service provider may not be made available to third parties, unless expressly agreed by the parties.

(iii)   Antivirus protection/firewall

Maintenance of an appropriate (in accordance with the current state of the art) level of IT security (firewall, SPAM filter, antivirus protection etc.). This includes in particular the installation of critical security updates in components and systems implemented by the customer for use of the software.

(iv)   Support in conducting audits.

(v)   Agreement on necessary and appropriate software adjustments.

XII. Warranty

A software defect shall only be acknowledged as such if negative differences are found compared with the relevant documentation. The customer understands that software will always contain some bugs.

The warranty of the service provider applies in the context of the agreed availability outlined in Clause VII. The warranty of the service provider is excluded beyond the agreed availability.

The statutory regulations regarding warranty apply. In this context, the application of § 536b of the German Civil Code (BGB) (lessee knows of the defect upon entering into the agreement or upon acceptance) and § 536c BGB (defects occurring during the lease period; notice of defect by the lessee) is referred to. The application of § 536a para. 2 BGB (right of lessee to remedy the defect himself) is excluded, however. The application of § 536a para. 1 BGB (lessor's liability for damages) is also excluded if the standard provides for liability without fault.

XIII. Liability

The service provider shall be liable in accordance with statutory regulations for any loss or damage to the customer caused with intent or by gross negligence, ensues from the absence of a warranted property, arises from a culpable breach of cardinal duties, results in harm inflicted on life, limb or physical health, or where liability is assumed under the German Product Liability Act.

Cardinal duties include those contractual obligations which have to be fulfilled in order for the agreement to be executed in the first place; which the contractual partner may rely on being performed as a matter of course; and which if breached by the other party may jeopardise the very purpose of the contract.

If a cardinal duty is breached, liability – provided the damage is merely caused by slight negligence – shall be limited to those losses which are typical and foreseeable and must therefore be anticipated in connection with the provision of software under the contractual agreement.

In all cases of slight negligence, the service provider shall be liable for a maximum amount equalling the value of the order.

The service provider shall not be liable for losses of information caused by force majeure or technical problems with the Internet or on the part of the server host, telecommunications company or energy supplier. Both parties shall cooperate to identify and eliminate losses of information. Liability does not cover incidental damages, consequential damages or lost profits, irrespective of the particular legal basis.

XIV. Customer data and release from claims of third parties

The service provider can store contents and data entered by the customer when using the software. The customer shall not enter any criminal or illegal contents or data.

The customer can request that the stored data be provided at any time during the term of the contract. Such a request must be communicated to the service provider in writing. The service provider will comply with this request within a reasonable period of time. The data will be deleted promptly by the service provider after the agreed term expires. The claim to surrender on the part of the customer is therefore excluded.

The customer shall remain the responsible authority in relation to personal data and must therefore continuously review whether the processing of such data using the software is covered by adequate legal permissions.

The customer alone is responsible for all contents used and data processed by it, including any permissions required. In principle, the service provider does not check the data entered or the contents used by the customer with the software.

In this context, the customer shall indemnify the service provider against all liability and costs, including potential and actual costs arising from legal proceedings, in the event that a claim is made by third parties, including by employees of the customer, as a consequence of alleged acts or omissions of the customer. The service provider shall inform the customer of any claim asserted and, to the extent legally possible, provide it with an opportunity to defend against such claims. At the same time, the customer shall immediately communicate to the service provider in full all information available to it relating to the facts and subject of the claim.

Claims for damages of the service provider beyond this shall not be affected.

XV. Rights to data processing, data backup, data security

The service provider adheres to the statutory data protection provisions.

For the purposes of executing the contract, the customer grants the service provider and any other providers engaged by it the right to copy the data to be stored by the service provider for the customer, if this is required in order to provide the services agreed under this contract. The service provider or other providers engaged by it may also store the data in a backup system or separate backup data centre. To eliminate disruptions, the service provider is further entitled to make changes to the structure of the data or the data format.

If the service provider processes or has personal data processed on behalf of the customer using IT systems for which it is technically responsible, a corresponding agreement on commissioned data processing must be concluded between the customer and the service provider.

The software and the customer data are protected against unauthorised access using appropriate technical measures. These measures include, among other things, certificate-based authentication for cloud applications, encryption of data transmitted to the cloud, separation of services and databases within the cloud environment, and encrypted customer access to the software and data. The technical security measures can be found in the relevant product description of the software. If vulnerabilities within the software are detected, the service provider shall inform the customer accordingly and if necessary provide security updates. The service provider is entitled to install critical software security updates without the explicit consent of the customer.

XVI. Support

The general provisions on software maintenance apply.
(https://www.ifm.com/de/de/de/terms-of-service).

XVII. Assignment of subcontractors

The service provider is entitled to assign the task of completing the contractually agreed services to third parties.

XVIII. Closing provisions

The assignment of rights and obligations from this contract is only permitted with the prior written consent of the service provider.

If individual clauses contained in this contract are or prove to be legally ineffective – in part or in full – the validity of the remaining provisions of this contract shall not be affected.

This contract is subject to German law to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods.

Essen has been chosen as the place of jurisdiction.