

# General Terms and Conditions for IoT Products

Date 09.07.2021 Version 1.2

## 1. SCOPE OF APPLICATION

1.1. All services related to a contract on the use of our "IoT Portal" with ALLNET Computersysteme GmbH, Maistr. 2, 82110 Germering ("ALLNET") are exclusively subject to the following general terms and conditions (Terms). Deviating terms of the customer do not become an integral part of the contract. They are hereby expressly excluded.

1.2 Our Terms apply to both consumers within the meaning of § 13 German Civil Code as well as businesses. Consumers have a statutory right of cancellation as indicated separately during the ordering process.

## 2. DEFINITIONS

2.1 The "contract" consists of the contractual document (generally our e-mail order confirmation), these Terms and the separate contract on order data processing (ODP) in the current version at the time the contract is concluded, a copy of which or download link we provide our customers by e-mail as part of an automated ordering process. The parties can further agree to individual additional services.

2.2 "authorised users" are

2.2.1. for business customers: employees of the customer and its affiliated companies as well as contractors, subcontractors and outsourcing partners acting on behalf of the customer or its affiliated companies and authorised by the customer to access the ALLNET applications and services and use these within the contracted scope, provided they were provided with a user ID and password by the customer.

2.2.2 for consumers: any individuals such as family members or household members acting on behalf of the customer and authorised by said to access the ALLNET applications and services and use these within the contracted scope, provided they were provided with a user ID and password by the customer.

2.3. "Customer data" means data generated, uploaded or transmitted by authorised users using the IoT products.

2.4 "IoT products", "IoT portal" or "IoT" refers to the entirety of the internet presence, software applications and databases as well services associated with their use or access to said made available to ALLNET customers.

2.5 The parties understand "user account" or "account" as the password-protected portion of the IoT portal where the customer can manage all of its master data, settings and measurement data as well as receive messages from ALLNET.

2.6 "Use" refers to the right of authorised users to access IoT products during the term of the contract to the contracted extent.

2.7 "Freemium account" or "Freemium customer" means the customer can use the IoT products or some of the functionality free of charge. The functionality, availability as well as guarantee and liability for service interruptions are limited under the provisions of these Terms.

2.8 The parties understand "Premium account" or "Premium customer" as a paid use of IoT products. The functionality, availability as well as guarantee and liability for service interruptions are subject to the provisions of these Terms.

## 3. SCOPE OF SERVICES, CHANGE OF SERVICES

3.1 The scope of services of IoT offers various functions which in the broadest sense enable processing and web-based visualisation of suitable "Home Automation" hardware such as heating control, lighting, switches and measurements of various devices equipped with sensor. ALLNET provides the customer a web-based interface for this purpose, where the customer can access a user account to control all of their devices, and merge and analyse the data generated in the process. For the exact scope of functions provided by ALLNET, please visit [www.allnet/iot.de](http://www.allnet/iot.de).

3.2 ALLNET is entitled to continuously update and improve IoT products in line with technical advancements. For this purpose, ALLNET may occasionally provide customers with free upgrades, updates, modifications, enhancements and other changes to the IoT products or change the available media materials (collectively "changes").

3.3 ALLNET will notify the customer of significant changes in due time to allow the customer to learn more. ALLNET will never make changes to Premium accounts which significantly reduce or otherwise affect the customer's use of the IoT products beyond reason.

3.4 The Premium customer may at any time object to a change they believe to significantly reduce performance or otherwise impairing beyond reason. If ALLNET has a legitimate interest in making the change (for instance for reasons of stability and security of ALLSIGNAGE) which overrides the legitimate interest of the Premium customer in keeping the unchanged version and the parties are unable to agree otherwise, both parties are entitled to extraordinary termination of the contract. Any mutual financial claims beyond the Premium customer being refunded partial unused amounts paid shall be excluded.

#### 4. REGISTRATION AND CONCLUSION OF CONTRACT

4.1 The services offered on the website are merely an invitation to tender and do not represent legally binding offers. By ordering the service, the customer submits an offer to conclude a contract. The contract is concluded by ALLNET accepting the offer.

4.2 A valid order requires the customer registering with ALLSIGNAGE, which allows the customer to create a user account. Registration requires the truthful and full completion of the registration form on the ALLSIGNAGE platform. Changes must promptly be updated by the customer. The use of pseudonyms is not permitted.

4.3 The registration is confirmed by ALLNET via e-mail. A confirmation link will be sent to the specified e-mail address for this purpose. After clicking the link provided, the user will then be activated, which completes the registration process. If the link is not clicked within four (4) weeks, the data submitted will be deleted.

4.4 ALLNET reserves the right to reject registrations using equitable discretion.

#### 5. USING IoT

5.1 ALLNET offers two license types related to IoT. The customer may book the IoT products for use, for example for their company or household. Resellers can purchase a license which allows them to offer third parties use of IoT products in their own name ("White Label"). The provisions under point 15 of these Terms apply in addition and take precedence for resellers.

5.2 ALLNET grants the customer the paid, non-exclusive (simple), non-transferable, non-sublicensable right to use the booked functions of IoT for their own business purposes via access to the central ALLNET server from the time the IoT products were provided and for the term of the contract. All intellectual and industrial property rights in the IoT software or database remain with ALLNET.

*5.3 The customer is prohibited from permitting third parties independent economic use, however may provide external service providers such as advertising agencies or similar third parties with their login data to the extent as they are fulfilling tasks for the customer.*

5.4 The customer must not, itself or through third parties, decompile, reverse engineer IoT software or reconstruct ideas, technologies or algorithms the source code is based on, make IoT product available to third parties or rent out, lease, lend or use said for economically comparable purposes beyond the cases presented herein. The customer further must not sublicense the rights of use and access privileges, transfer said to third parties, remove or hide brands, copyright or right holder notices or other notices related to IoT products or the related documentation.

5.6 The customer also must not use ALLSIGNAGE products for purposes which violate applicable law. This particularly applies to the use of media material which in the broadest sense is illegal to possess or process, or if this infringes on the intellectual or industrial rights of third parties or the rights of data subjects pursuant to the provisions on the general personal rights under the GDPR.

5.7 Furthermore, actions beyond normal use and which may disrupt operation of the ALLSIGNAGE products, for instance stress tests, scans or testing the vulnerability of ALLSIGNAGE products, are prohibited without the prior written approval of ALLNET, or signing in via a server or account the customer does not have access authorisation.

## 7. AVAILABILITY

ALLNET offers IoT as a SaaS solution. The customer is therefore provided with login data to access the IoT software and database running on the ALLNET server, providing the agreed functions. This does not provide the source code. An internet connection is required to use IoT. ALLNET guarantees Premium accounts an average annual availability (365 days) of IoT of 93 % on the internet end of the outgoing port of the ALLNET router. Any disruptions beyond the control of ALLNET, particularly internet problems outside the ALLNET interface or problems with the customer's internet connection shall be irrelevant. This also applies for times during which the platform cannot be accessed due to necessary maintenance provided ALLNET has given appropriate notice.

## 8. CUSTOMER RESPONSIBILITIES

8.1 The customer is responsible for all actions taken using its access authorisation. It is fully responsible for the integrity of data provided by it or authorised joint users. The customer shall further make reasonable efforts to prevent unauthorised access to or the use of IoT products, and must promptly notify ALLNET by e-mail at [support@allnet.de](mailto:support@allnet.de) of any misuse or loss of login data or suspicions thereof, or of any other known or presumed security breach.

8.2. The customer is obligated to regularly backup its data in ALLSIGNAGE in case of accidental loss.

## 9. AUTHORISED USERS

9.1 Use of IoT products by the customers as the registered holder is exclusively granted authorised users (known users); third parties as joint users may only be permitted use within the contracted scope. The access rights are assigned to persons named in the user hierarchy provided and must not be provided other persons or used jointly; however, they may occasionally be reassigned by the customer if the named users have ended their employment, service or other business relationship with the customer or no longer require use of the IoT applications for any other reason.

9.2 ALLNET keeps customer data confidential. The customer remains the owner of all rights related to its data, however grants ALLNET permission to process within the context of the agreed purpose of the contract. ALLNET only processes customer data pursuant to Article 6 (1) sentence 1 lit. b) and lit. f) GDPR within the context of the intended purpose of the contract. Furthermore, ALLNET complies with all legal requirements, particularly Article 32 GDPR with respect to administrative, physical and technical security measures to ensure the security, confidentiality and integrity of customer data pursuant to the provisions of the ODP. ALLNET will neither use nor disclose customer data unless required to do so in performance of the purpose of the agreement, a legal obligation or directly required for prosecution or legal defence.

## 10. PRICES, PAYMENTS

10.1 The respective prices in effect to use our IoT products are specified in the price lists in effect at the time the contract is concluded as published on our website <https://www.allnet/iot.de> and in the CMS. All prices listed exclude applicable value-added tax. Our invoices are issued monthly or annually for the respective period of performance based on the plan selected.

10.3 Depending on the product, we offer the following payment options: credit card, SEPA direct debit mandate, on account/prepayment, and PayPal.

10.4 In the case of paid use of IoT by billing cycle, typically by calendar month or calendar year, particularly for the booked device licenses and the range of functions, the respective amount due is billed in advance for the entire service interval at the beginning of the period of performance. At the end of a period of performance, the respective next fee is due the third business day of the new period of performance. Unless agreed otherwise in specific cases, all payments are charged by SEPA direct debit mandate or to a credit card.

10.5. If additional licenses or software expansions are booked during a period of performance, these will initially be prorated for the period of the previously booked services, then consistent with the previously booked services. The fee for individual services is due upon performance of service.

10.6 The customer may only offset or exercise a right of retention against our claims with counterclaims which are undisputed or established as final and absolute. The customer may only assign claims under this contract to third parties with the written approval of ALLNET.

10.7 In the event of default, default interest in the amount of nine percent (9 %) p.a. will be charged

10.8 The fees agreed herein exclude taxes and duties on foreign sales payable by the recipient of services for transactions and/or provision of services; the customer is solely responsible for these dues.

10.9 If a customer is at least 30 days late with payments, ALLNET reserves the right, without prejudice to further claims, to suspend use of the IoT products after an additional 10 days after ALLNET at a minimum notified the customer in text form, indicating the legal consequences, until paid in full. During this period, however at most for 6 months, the customer can still access its account and its data, however is unable to otherwise use IoT services.

## 11. TERM AND TERMINATION

11.1 The contract starts on the date specified in the agreement for the selected period. The customer can generally choose between monthly and annual terms. The term is indicated in the CMS under the customer's account.

11.2 The contract is automatically renewed by the same term as the original term unless cancelled by one of the parties beforehand. A contract for unspecified time can be properly terminated by either party effective the end of the month without a specific term of notice.

11.3 The customer may cancel by clicking the "Delete account" button or "Cancel subscription" in the CMS under the IoT account management, or in the settings under "My subscription" and then entering the password.

11.4. The right of both parties to extraordinary termination of contract for cause remains unaffected.

11.4. Upon termination of the contract, ALLNET will disable the customer's access to IoT products and the right of use for all user data provided ALLNET ends. A customer with a Premium account, however, can still access their account and back up user data for 6 months unless they requested the account to be completely deleted sooner

ALLNET typically makes user data for Premium customers with online backup function available for 6 months from expiration of the contract. If the Premium customer does not retrieve its data during this time despite being reminded at a minimum in text form including legal consequences, ALLNET may permanently delete these. On request, ALLNET will provide the customer with its exportable user data in a current file format against payment of the agreed or appropriate rates. The request must be submitted within 6 months from expiration of the contract.

## 12. WARRANTY

12.1. For Premium customers, ALLNET guarantees the IoT products can be run with the agreed specifications and are free from defects. In the event of a defect or failure of IoT products, ALLNET will at its choice either (1) repair the respective IoT products, or (2) terminate the contract and/or use of the IoT products. Any customer claims for damages under this section are governed by point 14.

ALLNET is not liable or responsible for delays, interruptions, service outages and other problems related to internet use, electronic communication or other systems of the customer.

## 13. WARRANTY OF TITLE

13.1 ALLNET undertakes to defend and indemnify the customer from third party claims for infringement of industrial or intellectual property rights arising from the contracted use of the IoT products, provided the customer reports such claims in a timely manner and has allowed ALLNET the opportunity to settle the claims for the customer out of court or in court at its own expense. Comparative negligence of the customer shall be recognised.

13.2 However, this does not apply if the presumed infringement is caused by (1) use of the IoT products in conjunction with other data, products, software, processes or materials not provided or authorised by ALLNET; (2) modification of the IoT products; (3) unauthorised use of the IoT products, or (4) customer data.

13.3 If use of IoT products in the agreed form infringes or threatens to infringe upon a right, ALLNET may at its sole choice and at its expense: (1) obtain the right to non-objectionable use of the IoT products for the customer, (2) modify the IoT products to eliminate such risk provided such change does not substantially limit or otherwise unreasonably impact use ("work around"), or (3) replace the IoT products with similar, functionally equivalent product at no charge to the customer.

13.4 If none of these options are economically viable, ALLNET is entitled to extraordinary termination of contract. In this case, ALLNET will refund the customer advance payments prorated for the period for which the IoT products are no longer available to the customer.

## 14. LIABILITY

14.1 Apart from the fees the customer owes ALLNET based on the contractual agreement, the joint and several liability of ALLNET irrespective if arising from the contract, basis similar to a contract or due to tort or related to other theory of liability, for customers,

- who are not a consumer, is limited to the amounts ALLNET received from the customer during the 12 months prior to the event resulting in such damages. The customer is advised to insure excess risks;

- for customers who are a consumer, is limited to the foreseeable damages typical for the contract.

- for customers using a Freemium account, is excluded.

14.2 The limitations of liability under point 14.1 do not apply to damages (1) caused deliberately, (2) for negligent injury to life, body and health, (3) due to gross negligence with regard to customary commercial diligence, (4) for Premium accounts due to violation of cardinal obligations, or (5) pertaining to liability for legal defects.

14.3 ALLNET, its affiliated companies, executive staff, employees, representatives, various agents assume no liability to the other party for distant damages caused by a defective product, lost profit or lost savings.

14.4 The limitations of liability under this section also apply in favour of legal representatives and vicarious agents of ALLNET if claims are asserted directly against them.

14.5 Liability under the product liability act and for a guarantee given by ALLNET remain unaffected.

14.6 In the event of data loss, the liability of ALLNET is limited to the typical recovery costs incurred when making regular backup copies appropriate for the risk.

14.7 No-fault liability for damages suffered by the user due to initial defects under § 536a (1) Alt. 1 German Civil Code and for damages due to unauthorised third-party access is excluded.

## 15. SPECIAL PROVISIONS FOR RESELLERS & ENTERPRISE LICENSES

15.1 The subject matter of this point is running a IoT White Label version (version in the customer's design and name). The provisions of this point 15 override any conflicting provisions of these Terms.

15.2 The holder of a IoT White Label license is granted the right for the term of the contract to use our IoT products within the contracted scope to such an extent the licensee itself is presented to its customers as the vendor. In this case, the vendor becomes the first level processor and Allnet the contractor (external processor). Allnet will provide the licensee with a functionality with respect to the IoT products which allows said to offer the product with its own design and name.

15.3 Apart from this, the license does not differ from the general utilisation concept these Terms are based on. This means that end users cannot acquire rights beyond those specified in these Terms.

15.4 The licensee undertakes to also stipulate the provisions of these terms pertinent for granting rights, their scope and limitations with its buyers.

15.5 The licensee shall on first request indemnify ALLNET of all third party claims asserted against ALLNET in the context of an infringement the licensee or its buyers are responsible for, particularly erroneous sublicensing.

15.6 The licensee is obligated to provide all information necessary to run a SAAS platform online for its customers itself. ALLNET is willing to provide support with this for a separate fee. The licensee shall further provide first level support itself.

15.7 If the licensee fails to meet its obligation to pay the fee due after two notifications in text form at a minimum, ALLNET is entitled to suspend its access until all outstanding amounts have been paid. If the partner does not settle outstanding amounts within 4 weeks from being suspended, ALLNET can also suspend all account access for customers of the licensee. If the licensee remains in default for another 3 months, ALLNET can permanently delete all data of the licensee's account.

15.8 In the case of a white label license, on termination of the contract for any legal reason, the licensee is not entitled to settlement or compensation for establishing a customer base, particularly no claim for compensation under § 89 b German Commercial Code in direct or analogue application.

15.9 If ALLNET determines the licensee is not using the memory space provided in the database for contracted purposes, ALLNET is entitled to extraordinary termination of the contract and suspending all access. In this case the licensee is not entitled to any claims for compensation against ALLNET.

## 16. GENERAL PROVISIONS

16.1 The contract is subject to the law of the Federal Republic of Germany under exclusion of the UN Convention on Contracts for the International Sale of Goods and under exclusion of the conflict of laws.

16.2 The exclusive place of jurisdiction for disputes if the customer is not a consumer is Munich, Germany.

16.3 Amendments and addenda must be made in writing; this also applies to waiving the written form requirement.

16.4 ALLNET and the customer will comply with the export rules of the European Union, the United States of America, the Federal Republic of Germany and other applicable jurisdiction in providing and using the IoT products. Each party confirms not being listed in a US register of persons or trade directory under which they are prohibited from receiving exports, and will not provide named persons access to IoT products infringing on foreign trade bans.

*Not required to be in the terms; however, the full text MUST be on the order page plus download option and included with confirmation (the buyer may first need to click on whether they are a consumer and only then show the text, etc.).*

## CANCELLATION POLICY FOR CONSUMERS

### Right to cancel

You have the right to cancel this contract within fourteen days without providing any reasons. The cancellation period is fourteen days from the date the contract is concluded.

To exercise your right to cancel, you must notify us (ALLNET Computersysteme GmbH, Maistr. 2, 82110 Germering, Tel. +49 (0)89 894 222 -22 Fax +49 (0)89 894 222 - 33, E-Mail: support@allnet.de) of your decision to cancel the contract by clear statement (e.g. a mailed letter, by fax, or by e-mail).

You may use the included sample cancellation form, however this is not required.

It is sufficient to send the notification of exercising your right to cancel before the expiry of the cancellation period in order to comply with the cancellation period.

### Consequences of cancellation

If you cancel this contract, we will immediately or at the latest fourteen days from the date of receiving your notice of cancellation of this contract, refund all payments we received from you including delivery charges (with the exception of additional charges arising from you choosing a shipping method other than our standard low-cost delivery). The refund will be processed using the same payment method used in the original transaction unless expressly otherwise agreed with you; under no circumstances will you be charged any fees for this refund.

If you requested services to start during the cancellation period, you must pay us the respective fee corresponding with the amount due for services provided up to the time when you notified us you wish to exercise your right to cancel this contract proportional to the full services stipulated in the contract.

### Sample Cancellation Form

(Please complete and submit this form to cancel this agreement.)

To ALLNET Computersysteme GmbH, Maistr. 2, 82110 Germering, Tel. +49 (0)89 894 222 -22 Fax +49 (0)89 894 222 - 33, E-Mail: support@allnet.de:

I/we (I) hereby cancel the contract concluded with me/use (\*) to provide the following service (\*), ordered on (\*)

Consumer name(s), consumer address, consumer signature(s) (for notice by paper only), date

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*Not required to be in the terms, however, the full text MUST be shown on the order page and a PDF included with the order confirmation.*

*This should be followed by a check box with the text: "I have received the cancellation policy" and an option to download the cancellation form next to it*

*Additional check box for the terms, which should have a download option, plus including the file with the order confirmation.:*

*Optional: Embed third check box same as above before completing the order. The box must NOT be checked already. The consumer MUST check it. The following text should be next to the box:*

*I hereby request ALLNET services owed under this contract to start immediately, meaning prior to expiration of the statutory 14 day cancellation period. I agree to losing my right to cancel on services starting.*

OR

*Leave out third spot, but then the right to cancel still applies if services start immediately, but the customer at a minimum owes a proportional fee if the contract is cancelled within the 14 day period (see below)*

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Attention: when "selling" the portal with hardware, this could potentially no longer be a freebie but part of the purchase agreement even if not charging extra! It depends on how it is advertised. This could for instance be selling a product, including a voucher / activation key for e.g. 4 weeks free, and then offering the customer a paid account at the end of the free period