

PŘÍLOHA Č. 2 – SML/0157/24, SE24002SML

PODMÍNKY SLUŽBY NETILION

PRÁVNĚ ZÁVAZNÁ JE POUZE ANGLICKÁ VERZE PODMÍNEK SLUŽBY.

[HTTPS://NETILION.ENDRESS.COM/LEGAL/TERMS-OF-SERVICE](https://netilion.endress.com/legal/terms-of-service)

YOUR AGREEMENT WITH ENDRESS+HAUSER

Contract Partner and Service

"Endress+Hauser" means Endress+Hauser Process Solutions AG, located at Christoph Merian-Ring 12, CH-4153 Reinach/BL (Switzerland), and its subsidiaries or affiliates involved in providing the Endress+Hauser Service. "Endress+Hauser" hereinafter is also referred to as "we", "us" or "our".

The term "you" shall mean you as natural person or the entity you represent. Endress+Hauser Services ("Endress+Hauser Services", "Services", the "Service") means the services Endress+Hauser makes available through this website, including the IIoT website, the Endress+Hauser cloud-based LCM Information Hub, the LCM Information Hub API, the Add-Ons, and any other software, hardware, or services offered by Endress+Hauser in connection with any of these.

Agreement

In order to use Endress+Hauser Services, you must first agree to the Terms of Service when registering. Notwithstanding you understand and agree that Endress+Hauser will treat your use of Endress+Hauser Services as implied acceptance of the Terms from that point onwards.

Entering the Agreement

You may not use Endress+Hauser Services if you are a person barred from receiving Endress+Hauser Services under the laws of the Switzerland or other countries, including the country in which you are resident or from which you use Endress+Hauser Services. If you are accepting these Terms on behalf of a company or other legal entity, you confirm that you have the legal authority to bind such an entity to these Terms, in which case "you" or "your" as used herein shall mean such an entity.

By using the website to consume content, buy products online or by using Endress+Hauser Services, you confirm that you are at least 18 years old, and are consenting to these terms of Service and to our Privacy Policy. These Terms are an integral part of the Website Terms of Use that apply generally to the use of our Site.

Service Expectation

You agree your purchases of Endress+Hauser Services are not contingent to the delivery of any future functionality or features or dependent upon any oral or written public comments made by Endress+Hauser regarding future functionality or features.

YOUR ACCOUNT AND USE OF THE ENDRESS+HAUSER SERVICES

Registration

Registration is a prerequisite for using Endress+Hauser Services and/or the API, if applicable. You shall provide accurate and complete registration information at any time you register to use Endress+Hauser Services. It is prohibited to attempt to cover or conceal your identity when requesting authorization to use the Service. You are responsible for the security of your passwords and for any use of your account. Your password may not be shared with any other individual or entity. If you become aware of any unauthorized use of your password or of your account, you agree to notify Endress+Hauser immediately.

Endress+Hauser reserves the right to deny any registration. Endress+Hauser is entitled at any time and without giving any reason to deny the right to access the password-protected area by blocking your account, in particular if you

1. use false data for the purpose of registration;
2. violate these Terms;
3. violate any applicable laws in the access to or use of Endress+Hauser Services; or
4. have not used Endress+Hauser Services for a long period of time.

You are responsible for all activities that occur under your account, regardless of whether the activities are undertaken by you, your employees or a third party (including your contractors or agents) and, except to the extent caused by our breach of these Terms, Endress+Hauser is not responsible for unauthorized access to your account. You shall contact us immediately if you believe an unauthorized third party may be using your account or if your account information is lost or stolen.

Compliance with Law and Regulations

Your use of Endress+Hauser Services must comply with all applicable international and national laws regarding the export of data and the use of Services, including the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, and end-user, end-use and destination restrictions issued by U.S. and other governments related to Endress+Hauser Services and technologies. Without limiting the generality of the foregoing, You shall not make the Service available to any person or entity that: (i) is located in a country that is subject to a European Union, United Nations or U.S. government restriction or embargo, including being identified as prohibited or restricted parties on a European Union, United Nations or U.S. government list; or (ii) is engaged in activities directly or indirectly related to the proliferation of weapons of mass destruction.

Administrative Interface

You agree not to (a) access (or attempt to access) the administrative interface of Endress+Hauser Services by any means other than through the interface that is provided by Endress+Hauser in connection with Endress+Hauser Services, unless you have been specifically allowed to do so in a separate agreement with Endress+Hauser, or (b) engage in any activity that interferes with or disrupts Endress+Hauser Services (or the servers and networks which are connected to Endress+Hauser Services).

Service Offerings

You may access and use the service offerings in accordance with these Terms. Endress+Hauser reserves the right to extend, modify and/or improve any aspect or feature of Endress+Hauser Services offered at any time. We will notify you of any material change or discontinuation of the Endress+Hauser Services.

Third party content, such as any contribution or postings, including photos, drawings, documentation videos or any other content uploaded by third parties, in particular by other users, are made available directly to you by other companies or individuals. Because we have not reviewed such third party content, you use such third party content at your own risk.

Usage Limitations

Your account has usage limits regarding storage. Endress+Hauser Services do not permit you to exceed the usage limits. Endress+Hauser reserves the right to enforce usage limits at its sole discretion, which may result in Endress+Hauser serving a notification to you. If you require extended limits, you are free to decide for other limits at another pricing level. If you repeatedly exceed your usage limits, we may work with you to seek to reduce your usage so that it conforms to the existing limit. If, notwithstanding our efforts, you are unable or unwilling to abide by a given usage limit, you shall request another pricing level with extended usage limits, or pay any invoice for excess usage, or be limited by us to the paid usage limitations.

Subscription

The Endress+Hauser Services are offered time-based for the subscription term. "Subscription Term" means the duration of the Endress+Hauser Service subscription identified in the applicable order form, meaning agreement between you and Endress+Hauser on the Endress+Hauser Services referencing the present Terms of Service including the Initial (Subscription) Term and all Renewal Terms.

FEES FOR USE OF THE ENDRESS+HAUSER SERVICES

Free and Paid Use

Subject to the Terms, Endress+Hauser Services are provided to you without charge up to certain limits or functions (the free "Basic Services"). Usage over this limit or the need to enable locked functions requires your purchase of additional resources or services (the paid "Premium Services"). The pricing for additional resources and services can be found at <https://netilion.endress.com/> (or such URL as Endress+Hauser may provide). The payment obligations are non-cancelable and the fees paid are non-refundable.

Payment

For all purchased resources and services, we will charge your credit card or invoice on a monthly basis or at the interval indicated in the Endress+Hauser's fees and payment policies, if different. Charges are solely based on Endress+Hauser's measurements of your use of the Endress+Hauser Services, unless otherwise agreed in writing. To the fullest extent permitted by law, refunds (if any) are at the discretion of Endress+Hauser and only in the form of credit for Endress+Hauser Services. Nothing in these Terms obligates Endress+Hauser to extend credit to any party.

Overdue Charges

If any invoiced amount is not received by us by the due date, then without limiting our rights or remedies, those charges may accrue late interest at the rate of 1.5% of the outstanding balance per month.

Suspension

Endress+Hauser reserves the right to discontinue the provision of Endress+Hauser Services to you for any late payments with prior notice of cessation of service to you of at least 30 (thirty) days in advance.

Taxes

Our service fees are net excluding any applicable taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "Taxes").

The parties take note that a withholding income tax and other taxes to be withheld on services provided shall be due in several countries. The parties agree that the Service User shall be responsible to ascertain whether such withholding income tax or any taxes required to be withheld under the applicable tax laws and regulations of its country of domicile is due in its country of domicile. The associated taxes to be withheld shall be borne by the Service User as agreed between the Parties. In addition, the Service User shall pay the due withholding tax or any other taxes to be withheld to the appropriate tax authority in due time.

The Service User shall provide Endress+Hauser with a written payment confirmation of the appropriate tax authority on request.

Sharing of Payment Information

Endress+Hauser uses a Payment Service Provider (the "PSP"). You acknowledge and agree that any credit card and related billing and payment information that you provide to Endress+Hauser's PSP may be shared by this PSP with other companies who work on the PSP's behalf, such as payment processors and/or credit agencies, solely for the purposes of checking credit, effecting payment to Endress+Hauser and servicing your account. Endress+Hauser may also provide information in response to a valid legal process, such as subpoenas, search warrants and court orders or to establish or exercise its legal rights or defend against legal claims. Endress+Hauser shall not be liable for any use or disclosure of such information by such third parties.

Change of Payment Conditions

Endress+Hauser may change its fees and payment policies for Endress+Hauser Services by notifying you at least thirty (30) days before the beginning of the billing cycle in which such change will take effect. Changes to the fees or payment policies will be posted on the website (or other such URLs Endress+Hauser may provide in future). Any outstanding balance becomes immediately due and payable upon termination of the Service for any reason.

Rights of use the Information, Documentation and other Content Content

You understand that all information (such as data files, written text, music, audio files or other sounds, photographs, videos or other images) to which you may have access as part of, or through your use of Endress+Hauser Services is the sole responsibility of the person from which such content originated. All such information is referred to below as the "Content".

Endress+Hauser Content

Subject to Section "Your Responsibilities/Endress+Hauser's Rights" below, Endress+Hauser grants to you a non-exclusive and non-transferable license for the license term that may not be sublicensed to use the information, documentation and other Content or material made available by Endress+Hauser on or via Endress+Hauser Services to the extent agreed or in the event that no such agreement exists, to extend the purpose for which it has been made available by Endress+Hauser.

Your Content

Subject to Section "License from You" below, you grant the same rights quid pro quo for all of your feedback, contribution or postings, including photos, drawings, documentation, videos or any other content uploaded by you and shared with other users of the Endress+Hauser cloud ("Your Content"). You consent to Endress+Hauser's use of Your Content to provide the service offerings and to continuously improve Endress+Hauser Services. Section "Your Content" of the Endress+Hauser Privacy Policy shall apply.

Removal of Content

Endress+Hauser reserves the right (but shall have no obligation) to disable any Content on Endress+Hauser Services. You agree to immediately take down any Content that violates these Terms of Service, including that pursuant to a takedown request from Endress+Hauser. In the event that you elect not to comply with a request from Endress+Hauser to take down certain Content, Endress+Hauser reserves the right to directly disable such Content or your account according to Section "Your Responsibilities/Endress+Hauser's Rights" herein until the potential violation is resolved.

Backup

You agree that Endress+Hauser shall have no responsibility or liability for the deletion or failure to store any Content and other communications maintained or transmitted through use of Endress+Hauser Services. You further acknowledge that you are solely responsible for securing and backing up Your Content.

YOUR RESPONSIBILITIES / ENDRESS+HAUSER'S RIGHTS

You shall be liable for any damage incurred as a result of third parties having obtained knowledge of your password due to your negligent or intentional conduct. In the event that your password has been stolen or if you obtain knowledge that your password is being unlawfully used by a third party, you shall immediately inform Endress+Hauser using the contact form provided on the website.

When accessing or using Endress+Hauser Services you shall not

1. Harm the business, interest or reputation of Endress+Hauser
2. Harm other persons, in particular minors, or infringe their personal rights; in particular by your submissions and postings
3. Violate any intellectual property right or any other proprietary right;
4. Upload any content containing a virus, e.g. a so-called Trojan Horse, or any malicious code that could damage data;
5. Transmit, store or upload hyperlinks or contents to which the user is not entitled, in particular in cases where such hyperlinks or contents are in breach of confidentiality obligations or unlawful; or
6. Distribute advertising or unsolicited e-mails (so-called "spam") or inaccurate warnings of viruses, defects or similar material.

You are responsible for properly configuring and using Endress+Hauser Services according to your needs and taking your own steps to maintain appropriate security, protection and backup of Your Content. Endress+Hauser reserves the right to remove any post or any of Your

Content breaking these Terms without prior contact with the author. Endress+Hauser's rights under Section "Rights of use the Information, Documentation and Other Content" shall remain unaffected.

LICENSE FROM ENDRESS+HAUSER AND RESTRICTIONS

License from Endress+Hauser

Subject to priority license terms and conditions, Endress+Hauser grants you a personal, worldwide, non-assignable and non-exclusive license for the license term to use the software provided to you by Endress+Hauser as part of Endress+Hauser Services. This license is for the sole purpose of enabling you to use and enjoy the benefit of Endress+Hauser Services as provided by Endress+Hauser in the manner permitted by these Terms.

Restriction

You may not (and you may not permit anyone else to): (a) copy, modify, create a derivative work of, reverse engineer, decompile or otherwise attempt to extract the source code of any underlying software in Endress+Hauser Services or any part thereof, unless this is expressly permitted or required by law or by the applicable license terms itself, e.g. open source software license, or unless you have been specifically told that you may do so by Endress+Hauser in writing; (b) attempt to disable or circumvent any security mechanisms used by Endress+Hauser Services or any applications running on the Endress+Hauser Services; or (c) interfering with the proper functioning of the service, including any deliberate attempt to overload the Service. A violation of these points might lead to a termination of your account according to Section "Termination by Endress+Hauser".

Hardware

For the execution of some Services the installation of separate hardware (the "Edge Device") may be required on your site. You agree that you are aware of this prior to booking such a service.

Property Rights

If you are subscribing to a Service requiring an Edge Device, we shall supply an Edge Device as part of the service provided that you pay, if applicable, for the installation. On installation, the Edge Device becomes your property but not the software in the Edge Device. You must allow Endress+Hauser to update this software by sending updates or patches to your Edge Device. Endress+Hauser will select the make and model of the equipment to be supplied to you under this offer at its discretion.

Installation

In general, you will not be charged for an installation. You are required to install the Edge Device on your own. Endress+Hauser will provide you with the necessary documentation to install the Edge Device by yourself. If you struggle to do so you can, (a) request a paid installation by Endress+Hauser, in which case we will send an Endress+Hauser service technician or request a licensed service provider to conduct the installation, or (b) to return the Edge Device at no cost to Endress+Hauser.

Usage

The Edge Device, as part of a dedicated service, will collect information from your connected field devices and send data to Endress+Hauser Services. Endress+Hauser reserves the right to perform data preprocessing including but not limited to data caching, compressing or preconditioning. On having the Edge Device integrated in your infrastructure you are entitled to install the Edge Device according to the QuickStart Manual and use it according to the User Manual. Further use, not specified in the related documentation, is not permitted.

The Edge Device, to enable and as part of dedicated services, will exchange information with your connected field devices and the Endress+Hauser Services. With your subscription to these service add-ons, the Edge Device will act as an intermediary between your connected field devices and the Endress+Hauser Services.

Updates

Endress+Hauser is constantly innovating in order to provide the best possible experience for its users. You acknowledge and agree that Endress+Hauser may provide updates and patches to the Edge Device enhancing its functionalities or fixing issues.

Connectivity

You agree to keep your field and Ethernet network connected to the Edge Device at all times. The Edge Device requires certain boundary conditions to work properly. This contains supported communication technologies to communicate to field devices and firewall settings. Please refer to <https://netilion.endress.com/> to find up-to-date compatibility lists and required IT infrastructure settings. If your environment does not fit the given conditions you acknowledge that the service does not fit for you and you will not order it. Connectivity problems arising from not considering the boundary conditions will not be supported by Endress+Hauser.

Irregular States

It may occur, due to several reasons including faulty data transmission or manipulated wiring, that your Edge Device does not work properly. When Endress+Hauser recognize such irregular operation states we will give a notification to you. Irregular working modes resulting from faulty data transmission, e.g. by your network or internet service provider, are not in the control of Endress+Hauser. Thus we refuse all liabilities concerning the data transmission between the Edge Device and Endress+Hauser Services. Irregular states do not create any obligation for Endress+Hauser to refund you.

LICENSE FROM YOU

License from You

Endress+Hauser claims no ownership or control over any of your Content. You retain copyright and any other rights you already hold on the Content and you are responsible for protecting those rights as appropriate. By submitting, posting or displaying the Content on or through Endress+Hauser Services you give Endress+Hauser a worldwide, and non-exclusive license to reproduce, adapt, modify and translate such Content for the sole purpose of (a) enabling Endress+Hauser to provide you with the Endress+Hauser Services, (b) analyzing and improving the operation of the service and (c) to develop additional service offerings.

Collaborators

By adding a collaborator to your account, you hereby grant that user a non-exclusive, non-transferable license, with no right to sublicense, permission to use, display, perform, reproduce, modify, distribute, list information regarding edition, translate and analyze the Content as permitted by the relevant Endress+Hauser's Services functionality or features for the sole purpose of collaborating.

Feedback

You may choose to or we may invite you to submit comments or ideas about Endress+Hauser Services, including without limitation ideas on how to improve Endress+Hauser Services or our products (the "Idea" or "Ideas"). By submitting any Idea, you agree that your disclosure is gratuitous, unsolicited and without restriction and will not place Endress+Hauser under any fiduciary or other obligation and that we are free to use the Idea without any additional compensation to you and/or to disclose the Idea on a non-confidential basis or otherwise to anyone.

THIRD PARTY PROVIDER

Use of Partner Applications

Endress+Hauser may make available through the Endress+Hauser Services additional applications and services offered by its third-party partners ("Partner Apps").

Your use of Partner Apps is subject to these Terms and to the applicable fees. You acknowledge for each Partner App you subscribe to or purchase through Endress+Hauser Services, these Terms constitute a binding agreement between you and the third-party licensor of that Partner App ("the Partner App Provider") only. The Partner App Provider of each Partner App is solely responsible for that Partner App, the Content therein and any claims that you or any other party may have relating to that Partner App or your use of that Partner App. You acknowledge that you are purchasing the license to each Partner App from the Partner App Provider and that Endress+Hauser is acting solely as agent for the Partner App Provider in providing each such Partner App to you. Endress+Hauser is not a party to the license between you

and the Partner App Provider with respect to that Partner App. You acknowledge and agree that Endress+Hauser is a third-party beneficiary of the agreement between you and the Partner App Provider for each Partner App. We do not warrant or support Partner Apps unless expressly provided in a notification or statement by Endress+Hauser.

Sharing of Data

By subscribing to or purchasing a Partner App, you grant Endress+Hauser permission to share your Content and user information with a Partner App Provider as necessary in order to provide you with the Partner App and its contained service.

Subcontractors

You understand that Endress+Hauser uses third-party vendors and hosting partners to provide the necessary hardware, software, networking, storage and related technology required to run Endress+Hauser Services. These subcontractors are bounded to the Terms given by Endress+Hauser to the end user.

Hyperlinks

Endress+Hauser Services may contain hyperlinks to the web pages of third parties, including third-party partners. Endress+Hauser shall have no liability for the content of such web pages and does not make representations about or endorse such web pages or their content as its own, as Endress+Hauser does not control the information on such web pages and are not responsible for the contents and information given thereon. The linked pages were checked for possible legal violations at the time of linking. Illegal contents were not recognizable at the time of linking. However, a permanent control of the contents of the linked pages is not reasonable without concrete evidence of a violation of the law. If we become aware of any infringements, we will remove such links immediately.

LEGAL NOTICE

Copyright

The content and works created on these pages are subject to copyright law. Duplication, processing, distribution, or any form of commercialization of such material beyond the scope of the copyright law shall require the prior written consent of its respective author or creator or the copyright owner. Insofar as the content on this site was not created by us, the copyrights of third parties are respected. In particular, third-party content is identified as such. Should you nevertheless become aware of a copyright infringement, please inform us accordingly. If we become aware of any infringements, we will remove such content immediately.

Trademarks

All brands and trademarks mentioned on the website and, if applicable, protected by third parties, are subject without restriction to the provisions of the applicable trademark law and the ownership rights of the respective registered owners. The mere mention of a trademark does not imply that it is not protected by the rights of third parties.

Data Privacy

For collection, use and processing of personal data of the user of Endress+Hauser Services, Endress+Hauser shall comply with applicable laws on data privacy protection and the Endress+Hauser website data → Privacy Policy, which is available per hyperlink on the Endress+Hauser website.

MODIFICATION AND TERMINATION OF ENDRESS+HAUSER SERVICES

Modification

Endress+Hauser is constantly innovating in order to provide the best possible experience for its users. You acknowledge and agree that the form and nature of Endress+Hauser Services that Endress+Hauser provides may change from time to time. Changes to the form and nature of Endress+Hauser Services will be notified within thirty (30) days before they become active and effective with respect to all versions of the Endress+Hauser Services. Examples of changes to the form and nature of Endress+Hauser Services include without limitation changes

to fee and payment policies, added functionality and other enhancements.

The latest version of these Terms of Service will be posted on this Site, and you should review these Terms before purchasing any product or services that are available through this Site. Your continued use of this Site after a posted change in these Terms will constitute your acceptance of and agreement to such changes.

Termination by You

You may terminate the contract at any time by canceling your account on Endress+Hauser Services. If you are using a paid account you may cancel your account within the cancellation period before it is automatically renewed, which is at the latest one month before your actual contractual period ends. In the event of an earlier termination Endress+Hauser is not obliged to refund you.

Termination by Endress+Hauser

Endress+Hauser may terminate this agreement by causal notice to you, whereby said notice may be delivered via email or in writing, without liability or other obligation to you:

1. Upon 30 days written notice to you of a material breach if such breach remains uncured after the expiration of such period.
2. If you become the subject of a petition in bankruptcy or any other proceeding relating to insolvency,
3. Receivership, liquidation or assignment for the benefit of creditors.
4. If you do not agree changed Terms of Service.

Upon termination of your license by casual notice, you shall stop using Endress+Hauser Services and remove all Endress+Hauser marks from your presence, if any.

Data Export

You are solely responsible for exporting your Content from Endress+Hauser Services prior to the termination of your account for any reason. In the event that we terminate your account, we will provide you data access for further 3 (three) months to retrieve your Content. In this case only the Service itself will be interrupted. After a period of 3 (three) months at the latest, you will receive written confirmation about the deletion of your data and sanitization of all computing resources.

Hardware

You recognize that in case of contract termination a possible previously delivered and installed Edge Device will no longer send data to Endress+Hauser Services or Endress+Hauser Services will refuse to save any incoming data.

WARRANTIES

Basic Service

When the Endress+Hauser Services are provided free-of-charge the following provisions shall apply:

1. Endress+Hauser Services are provided "as is" with no warranty, express or implied, of any kind and Endress+Hauser expressly disclaims any and all warranties and conditions, including, but not limited to, any implied warranty of merchantability, fitness for a particular purpose, availability, security, title and/or non-infringement. Your use of Endress+Hauser Services is at your own discretion and risk.
2. Endress+Hauser makes no representations or warranties that Endress+Hauser Services will run uninterrupted, error-free, or completely secure or that data stored using Endress+Hauser Services will be secure or otherwise safe from loss or damage. Endress+Hauser shall not be responsible for any interruptions to Endress+Hauser Services, including but not limited to power outages, system failures or other interruptions including those that affect the acceptance and completion of payments for purchases.
3. No advice or information obtained from us by you directly via Endress+Hauser Services or any third party shall create any warranty not expressly stated in these Terms of Service.
4. Endress+Hauser's liability remains expressly reserved in respect of fraud and/or fraudulent misrepresentation; willful abandonment or misconduct or gross negligence.

Premium Service

When the Endress+Hauser Services are purchased, the following provisions shall apply:

1. Endress+Hauser warrants that during the Subscription Term Endress+Hauser Services meet the applicable specifications and are free from quality defects and malware.
2. Endress+Hauser warrants that to the best of its knowledge Endress+Hauser Services do not infringe any third-party IP rights enforceable in the European Union or Switzerland at the time of delivery of the Service. Endress+Hauser does not however warrant freedom from defect in title for any other territories than the aforementioned or for any third-party software, including open source software that is delivered with, used or facilitated by Endress+Hauser Services. Endress+Hauser will remedy defects in title of Endress+Hauser Services either by procuring the legally incontestable right under license to use Endress+Hauser Services or, at Endress+Hauser's choice, by providing equivalent replacement, altered Endress+Hauser Services or terminating the subscription agreement and refunding any fees paid due to the end of booking period, if any.
3. If you have set a reasonable limited additional time period for Endress+Hauser to remedy the defect in quality or title and Endress+Hauser finally fails to do so in that time, than you have the right to rescind the contract.
4. The aforementioned remedies are available only if discovery of any non-conformity occurs during the subscription period. Endress+Hauser shall be promptly notified in writing of, but no later than thirty (30) days after, such discovery by you and Endress+Hauser's examination shall also disclose that such a non-conformity exists.
5. Except for the express limited warranty provided in this Section, Endress+Hauser expressly disclaims any and all other warranties and conditions, including, but not limited to, any implied warranty of merchantability, fitness for a particular purpose, availability, security, title and/or non-infringement.

General

Notwithstanding anything to the contrary in these Terms of Service, the provisions in the Section "Warranties" shall apply and state the entire liability and obligations of Endress+Hauser and the sole and exclusive remedy of the contract partner with respect to any defects in Endress+Hauser Services.

LIMITATION OF LIABILITY

1. Endress+Hauser's maximum liability for all direct damages or immediate losses arising out of or relating to the respective contract or the use or inability to use Endress+Hauser Services, including any Edge Device, if any, is limited to the amount of the annual subscription fee per claim and per annum.
2. Endress+Hauser's liability for all indirect or consequential damages, such as loss of profits, loss of goodwill, loss of business reputation or loss of customer shall be excluded.
3. The limitations and exclusions in this section shall apply regardless the cause of action and whether a claim is based in contract, warranty, indemnity, tort or otherwise.
4. Endress+Hauser's liability remains expressly reserved in respect of:
 - death or personal injury caused by its negligence (including negligence of its employees, agents or contractors);
 - fraud and/or fraudulent misrepresentation;
 - willful abandonment or misconduct or gross negligence;
 - product liability or any other liability which may not otherwise be limited or excluded under applicable law.

INDEMNIFICATION

(1) You agree to hold harmless and indemnify Endress+Hauser, its subsidiaries and affiliates, Endress+Hauser Partners as well as their directors, representatives and employees ("indemnatee") from and against any third party claim arising from or in any way related to (a) your breach of the Terms of Service, (b) your non-conforming use of Endress+Hauser Services, (c) your violation of applicable laws, rules or regulations in connection with Endress+Hauser Services or (d) your

Content, including any liability or expense arising from all claims, losses, damages (actual and consequential), suits, judgments, litigation costs and attorneys' fees, of every kind and nature. In such a case, Endress+Hauser will provide you with written notice of such claim, suit or action.

(2) If an Indemnatee becomes aware of a third-party Claim that (if successful) will result in a Loss to be Indemnified under this Section, the indemnatee will promptly notify You in writing (with a copy of the notice to the Indemnitor's legal counsel). Failure or delay in giving such notice will not affect the right to be Indemnified except to the extent that it prejudices the defense of the Claim. If You acknowledge that the Claim (if successful) will result in Loss within your obligation to indemnify under this Section, you may assume the defense within fifteen (15) days after receiving the notice of the Claim. In the meantime, the Indemnatee may take any action that it deems appropriate to protect its interests or those of You, provided it is not prejudicial to You.

CHANGES TO THE TERMS OF SERVICE

We may modify the Terms of Service or any portion hereof, for example, to reflect changes to the law or changes to our Endress+Hauser Services. We will post notice of modifications to the Terms of Service within the documentation of the Service, to the website <http://www.netilion.endress.com> and in a personal notification to you. The notifications, in case of changes, will be sent out at the latest 30 (thirty) days before the general contractual period ends.

New customers will be bound to the most recent version of the Terms of Service.

Existing customers in general are bound to the version of the Terms of Service to which they agreed when booking the service or extending the period of usage. Modified or new Terms will become active with the new contractual period. A refusal to agree to changed Terms of Service will lead to a contract termination according Section "Modification and Termination of Endress+Hauser Services".

MISCELLANEOUS

Scope

The Terms of Service constitute the whole legal agreement between you and Endress+Hauser and govern your use of Endress+Hauser Services (but excluding any services which Endress+Hauser may provide to you under a separate agreement), and completely replace any prior agreements between you and Endress+Hauser in relation to Endress+Hauser Services.

Relationship of the Parties

You and Endress+Hauser shall exist and act independently and not as partners, joint venturers, agents, employee or employer of the other. You shall not have any authority to assume or create any obligation for or on behalf of Endress+Hauser, express or implied, and you shall not attempt to bind Endress+Hauser to any contract. This clause shall not apply in the case that Endress+Hauser Services are licensed and utilized within the Endress+Hauser Group by Endress+Hauser entities other than Endress+Hauser Process Solutions AG.

No Waiver

You agree that if Endress+Hauser does not exercise or enforce any legal right or remedy which is contained in the Terms (or which Endress+Hauser has the benefit of under any applicable law), this will not be taken to be a formal waiver of Endress+Hauser's rights and that those rights or remedies will still be available to Endress+Hauser.

Severability

If any provision of these Terms of Service is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision and that the other provisions remain in full force and effect

Governing Law, Jurisdiction

The Terms of Service and the legal relationship between you and Endress+Hauser shall be exclusively governed and construed in accordance with the laws of Switzerland, but excluding the CISG.

Place of jurisdiction for all disputes arising out of or relating to the Terms of Services and use of them regardless of the legal reason shall be at the seat of Endress+Hauser, Reinach/BL (Switzerland).

For questions about these or any Endress+Hauser Terms or Policies, email us at: service.ehds@endress.com