

## **General Terms and Conditions for EasternGraphics GmbH Online Services (as at 2019-06-01)**

### **I. Scope of application, supplementary contract terms**

(1) The General Terms and Conditions (T&C) for online services „T&C OS“ of EasternGraphics GmbH (“EGR”) are applicable to any and all online services contracts with customers, and they are deemed to be an integral part of each contract, unless separately otherwise agreed between EGR and Customer.

(2) These T&C shall apply exclusively. Any deviating, contradicting or supplementary T&C of Customer shall not become an integral part of the contract unless and to the extent EGR has consented to their application expressly and in writing. This consent requirement shall apply in each case, and in particular if EGR, being aware of Customer’s T&C, performs a delivery or renders services to such customer without reservation.

3) For the rest, the licence conditions of the manufacturer of the respective software and – if the software is installed in the server infrastructure of an external computer center – the contractual provision of such computer center shall apply.

### **II. Services**

(1) EGR makes available to Customer the contractually agreed online services and/or software in accordance with the usage rights mentioned in paragraph III. hereof regarding the online use via Internet and/or via an agreed data network (hereinafter „data network“). For this purpose, EGR will make available the online services and/or software on a server infrastructure which can be reached by Customer via the data network. There is no obligation to provide a user manual for the online services and/or the software unless otherwise expressly agreed in writing.

(2) The service description describes exhaustively all functions and services of the online services and/or software if they are used in accordance with the contract. Public statements, praise or advertising do not constitute a statement of performance or quality.

(3) EGR undertakes, for the term of the contract, to maintain the online services, the software and the data network connection in accordance with paragraph V. hereof.

(4) The services are mentioned in the paragraphs II., III. and V. hereof are exhaustive. Any further services are not part of the contract unless separately agreed.

### **III. Usage rights**

(1) EGR grants Customer, for the term of the contract, a simple, non-exclusive, non-transferable right for persons to use the online services and/or the software via the user interfaces for the purpose determined by EGR for such online services and/or software.

(2) The type and scope of the usage rights regarding software of third parties made available by EGR to Customer are subject to the terms of use of such third parties, and such usage rights are limited to the term of the contract. EGR will make available to Customer the terms of use of such third party.

(3) Customer must not allow third parties to integrate the online services or the software into systems other than those of Customer.

(4) In the case of violations of the provisions of paragraph III. (1) to (3) and of paragraph IV. (6) hereof by Customer or by a third party which has been enabled by Customer to use the

online services and/or the software, the usage rights will be forfeited.

(5) Usage rights granted to Customer are also forfeited if and as long as the agreed remuneration for the use of the online services or of the software is not paid to EGR at all or in due time. In such cases EGR has, in addition, the right to block the online services and/or the online access to the software immediately and without reminder.

### **IV. Customer’s obligations**

(1) Customer undertakes to provide any customary and appropriate cooperation required for Customer’s use of the online services and/or the software and which is within his sphere of influence and/or responsibility.

(2) Customer shall ensure that its hardware and software used within the framework of the contract is technically suitable for the use of the online services and/or the software and compatible with the hardware and software used by EGR to render its contractual services. In particular, EGR is not liable for the suitability, functionality and compatibility of Customer’s hardware and software.

(3) Customer is, in particular, obliged to adapt its systems, through which it accesses the online services and/or the software, to the latest versions of the interface between the online services and/or the software and the systems of Customer on its own responsibility and at its own cost. The adaptation of Customer’s systems to the new version shall be completed each time within six (6) months after the provision of the information and specifications regarding the interface. On expiry of this six month period, the reachability of the online services and/or the software is only guaranteed via the new version of the interface. EGR is not liable for damages that are the result of Customer’s failure to adapt its systems to the latest interface versions at all or in due time.

(4) Customer’s online access to the Internet and/or the contractually agreed data network as well as any costs incurred in connection therewith is Customer’s responsibility.

(5) Customer shall take appropriate precautions to protect its online access and the access to the online services and the software against unauthorized access.

(6) Customer shall refrain from taking any action that may or will put at risk the online services and/or their performance. In particular, Customer shall refrain from retrieving or sending data in an automatized manner, e.g. via scripts, and thereby transferring data volumes and/or initiating calculation processes on servers exceeding those caused by users during normal use.

### **V. Availability of the software**

(1) EGR guarantees 95 % reachability on a three month average for each calendar quarter of the online services and/or the software from the server infrastructure of EGR and/or of the computer center to the transfer point into the public and/or the agreed data network. Not included in the calculation of reachability are hours during which the server cannot be reached due to technical or other problems which are not within EGR’s sphere of responsibility and influence (e.g. force majeure, natural disasters, strikes, industrial disputes, fault of third parties etc.).

(2) EGR may restrict access to online services or to the software if this is required due to technical changes, system maintenance,

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the safety of network operation, the maintenance of network integrity, in particular to avoid network disturbances of the online services, of the software or of saved data.

(3) Unless otherwise agreed, the online services and the software will be made available for online use on a server infrastructure chosen by EGR.

### **VI. Update usage rights**

The provisions hereof, in particular the provisions of paragraph III., shall apply to the use of updates mutatis mutandis.

### **VII. Data backup**

(1) The backup of the data and their recovery in case of loss is Customer's responsibility.

(2) Security and backup of the online services and of the software as well as the restoration of availability of the server infrastructure is EGR's responsibility.

### **VIII. Data protection**

(1) EGR and Customer undertake to comply with the applicable data protection laws and regulations.

(2) If Customer, itself or via EGR, collects, retrieves, processes or uses personal data in connection with the online use of the software in the capacity of controller under data protection law, Customer shall ensure beforehand that it is authorized to collect, process and/or use such data in the concrete manner in accordance with applicable law and in particular with the data protection regulations, and, in the event of violation of such law or regulation, Customer shall hold EGR free and harmless against third party' claims on first demand.

### **IX. Warranty and liability**

(1) Customer is aware of the fact that this complex type of software cannot be developed 100 % error-free.

(2) EGR shall be immediately notified of any defect or malfunction in a comprehensible manner and in writing via e-mail or fax. EGR will remedy the defect within a reasonable time after receipt of such notification. To the extent reasonable for Customer, EGR has the right, in order to remedy the defect, to provide Customer with a new version of the online services and/or the software which no longer contain or eliminate the notified defect or to develop a fall-back solution.

(3) If and to the extent tenancy law applies, strict liability of EGR in accordance with § 536 I of the German Civil Code is excluded. Customer's right to termination for deprivation of use in accordance with section 543 (2) 1 of the German Civil Code and the right to reduce the remuneration are excluded as long as the reachability and/or the use of the online services due to the elimination of defects is reduced or excluded no more than 48 continuous hours.

(4) EGR is not liable for defects due to operating errors and/or that have occurred after use contrary to contract, unless Customer proves that the defects have not been caused by the events mentioned above.

(5) EGR is not liable for the content accuracy of Customer's data in the online services and/or the software or for any defects or errors resulting therefrom.

(6) EGR is not liable for the functionality of the external data lines to its server, nor is EGR liable for power outages or for restrictions or failures of performance which are due to force

majeure or to events which substantially complicate, restrict or render impossible the performance of a service. This includes, in particular, strike, lockout, official orders, failure of communication networks of other operators, malfunctions at the respective line provider as well as malfunctions that are within the risk area of other network providers.

(7) Customer must not enforce a reduction by deduction from the agreed remuneration. Claims against unjust enrichment and for damages shall remain unaffected.

(8) If it turns out that a defect reported by Customer does not actually exist and/or is not caused by the online services or the software, EGR may charge Customer for the costs arising from the analysis and other processing in accordance with its current price list for services.

(9) The liability of EGR or of its representative or vicarious agent is limited to willful intent and gross negligence, regardless of the legal reason. In the event of willful intent and gross negligence, the statutory provisions shall apply.

(10) In the event of bodily injury or the breach of an essential contractual obligation („cardinal obligation“), EGR will also be liable in the event of slight negligence. If an essential contractual obligation is breached, EGR's liability will be limited to the foreseeable damage typical of this type of contract. Cardinal obligations are obligations the fulfillment of which is required for the proper implementation of the contract and on the compliance of which the contracting parties regularly rely on and may rely.

(11) EGR is not liable for the loss of data if the damage could have been prevented by means of proper data protection for which Customer is responsible. Proper data protection is ensured if Customer performs daily data backups in machine-readable form as can be proven thus ensuring that such data can be recovered with reasonable efforts. The liability of EGR for the loss of data – unless caused by willful intent or gross negligence on the part of EGR – is limited to the typical recovery expenses that would have incurred if proper data protection had been performed

(12) EGR is not liable for the dissemination of confidential data stored in EGR's system if and to the extent the dissemination of such data is due to the misuse of passwords and login data for which EGR is not responsible.

(13) To the extent EGR's liability is excluded or limited, the same exclusion and limitation shall apply to the personal liability of EGR's employees and staff as well as for third parties acting by and for EGR.

(14) Liability under the German Product Liability Act shall remain unaffected.

### **X. Control rights of EGR**

(1) EGR has the right to read and check any data transmitted and retrieved via Customer's online access if there is reason to suspect that such data is connected with illegal activities or the contents of the data violate applicable law or the accepted principles of morality.

(2) EGR has the right of access to the data transmitted and retrieved by Customer via the online access if and to the extent this is required to check the system.

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**XI. Commencement, term and termination of the contract**

(1) The provisions of this paragraph XI. regarding commencement, term and termination of the contract will apply unless and to the extent otherwise agreed:

(2) The contract shall commence upon provision of the service by EGR. It is concluded for an indefinite period and can be terminated with a three (3) month notice to the end of each calendar month.

(3) The right to extraordinary termination and, as the case may be, without notice, for good reason shall remain unaffected.

(4) A termination is subject to the formal requirements set forth under XII. (3).

**XII. Miscellaneous provisions**

(1) The law of the Federal Republic of Germany shall apply exclusively. Any application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.

(2) The place of jurisdiction for both contractual partners shall be Erfurt (Germany) to the extent permissible by law.

(3) Any agreements between the contractual partners must be in writing in order to become valid with e-mail fulfilling this requirement.

(4) In the event any provision is not effective or loses its effectiveness due to a later circumstance, or if a gap is detected, the effectiveness of the remaining provisions shall remain unaffected. In this event, the both contractual partners shall replace such ineffective provisions immediately and/or fill the gap with such effective provisions that correspond to the economic purpose of the contract. In the event the contracting parties fail to do so although proven serious effort was made, such ineffective provisions and/or gaps shall be replaced with the legal provisions of the Federal Republic of Germany.