

# **General Terms and Conditions of EasternGraphics GmbH for Online Services "OS GTC"**

## **(Status 2023-01-01)**

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

- (1) The General Terms and Conditions for Online Services "OS GTC" of EasternGraphics GmbH, Albert-Einstein-Straße 1, 98693 Ilmenau, Germany ("EGR") shall apply to contracts for online services with customers and shall be deemed an integral part of the contract unless otherwise agreed in writing in an individual agreement between EGR and the customer. They shall also apply to the use of EGR's online services by users (also "customer") that are provided free of charge.
- (2) online services are in particular online applications, cloud services; software-as-a-service (SaaS) and internet pages.
- (3) These OS GTC shall apply exclusively. Any deviating, contradicting or supplementary terms and conditions of business of the 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 the customer's terms and conditions of business, performs a delivery or renders services to such customer without reservation.
- (4) These OS GTC shall also apply if the customer uses the online services with which these OS GTC are provided
- 5) Furthermore, the license terms of the manufacturer of the respective software and - if the software is installed in the server infrastructure of a third party (e.g. external computer center) - the contractual terms of the respective third party shall apply.

### **II. Services**

- (1) EGR shall make the online services available to the customer in accordance with the rights of use referred to in clause IV hereof for online use via the internet, a data network or via an app. The online services shall be provided for this purpose by EGR on a server infrastructure which can be accessed by the customer via the internet, the data network or the app. The procurement and maintenance of the system infrastructure required for the use of the online services outside EGR's server infrastructure (in particular hardware, e.g. computer, tablet, smartphone; operating system; software, e.g. browser or app) and the establishment and maintenance of access to the internet or data network shall be the responsibility of the customer. A user manual for the online services or the software is not owed unless this is expressly agreed in writing.
- (2) The user interface or the specification of the online service conclusively states which functions and services the online services or software have when used in accordance with the contract. Public statements, praise or advertising shall not constitute a statement of performance or quality.
- (3) EGR undertakes for the term of the contract to maintain the online services and to maintain and support the software and its availability in accordance with clause VI hereof. This obligation shall not apply to online services provided free of charge; these may be discontinued at any time immediately and without prior notice.
- (4) The services are exhaustively listed in sections II., IV. and VI. hereof. The functions of the online services result from their specification or their user interface. Other or additional services or functions are not part of the contract unless they have been agreed separately in writing.

### **III. Rights of Use (License)**

- (1) The owner of all rights to and producer of the software and operator of the online services shall be EasternGraphics GmbH, Albert-Einstein-Straße 1, 98693 Ilmenau, Germany (licensor). On the basis of the contract for online services between EGR and the customer on the basis of these OS GTC, the customer shall be granted, on the basis of the Copyright Act (UrhG) of the Federal Republic of Germany, the non-exclusive, non-transferable and non-sublicensable right, limited in time to the term of the contract for

online services, to use the online services, including the software provided via them, in accordance with the provisions of these OS GTC for the customer's own purpose as determined by EGR for the respective online service by natural persons via user interfaces (e.g. in the browser or in an app). Automated use is not permitted. This right of use is subject to the timely and complete payment of the agreed remuneration.

- (2) The nature and scope of the rights of use for third-party online services or third-party software which EGR makes available to the customer shall be governed by such third party's conditions of use and shall be limited to the term of the contract. EGR shall make the third party's terms of use available to the customer at its request.
- (3) The Customer is not permitted to integrate the online services into third-party systems or to enable third parties to integrate the online services into systems other than the customer's systems.
- (4) In the event of a violation of the provisions of clause IV. (1) to (3) and clause V. (5) and (6) hereof by the customer or by a third party enabled by the customer to use, the rights of use shall expire immediately.
- (5) The rights of use granted to the customer are also forfeited if and as long as the agreed remuneration for the use of the online services has not been paid to EGR or has not been paid on time. In addition, in the event of non-payment or late payment of the agreed remuneration, EGR shall have the right to block the online services and/or online access to the software immediately and without reminder and to revoke the rights of use.

### **IV. Remuneration and terms of payment**

- (1) The remuneration to be paid by the customer to EGR for services against payment and the terms of payment applicable to them shall be stated separately for the services concerned (e.g. in the context of access to the online service concerned).
- (2) EGR shall have the right to adjust the remuneration annually on 1 January by the annual average change in the total consumer price index (CPI) published by the Federal Statistical Office in Germany in the last calendar year in relation to the calendar year before last, expressed as a percentage (rate of change), to the extent that this is reasonable. The difference between a remuneration already charged or already paid shall be credited or charged to the customer retrospectively after publication of the rate of change. Prices shall be rounded to full euros in accordance with commercial practice. If the consumer price index is no longer continued by the Federal Statistical Office, it shall be replaced by the one determined by law, or alternatively by the cost of living index applicable in the area of the Federal Republic of Germany, which most closely corresponds to the consumer price index at the time of its replacement.
- 3) EGR shall be entitled to increase the remuneration with effect from the next calendar year with three months' notice. On receipt of EGR's statement concerning the increase in remuneration, the customer shall have the right to terminate the software maintenance contract with two months' notice to the end of the then current calendar year. If the customer does not exercise this right, it will thereby declare its consent to the increase in remuneration from the next calendar year.

### **V. Customer's obligations**

- (1) The customer shall be obliged to perform, at its own expense, all customary and reasonable acts of cooperation which are necessary for the use of the online services on its part and which lie within its sphere of influence or responsibility.
- (2) The customer shall ensure that the hardware and software it uses within the framework of the contract is technically suitable for the use of the online services and is compatible with the hardware and software with which EGR provides its services. In particular, EGR shall not be liable for the suitability, functionality and compatibility of the customer's hardware and software.

## **General Terms and Conditions of EasternGraphics GmbH for Online Services "OS GTC"** **(Status 2023-01-01)**

(3) The customer shall in particular be obliged to adapt its systems by means of which it accesses or uses the online Services to the respective latest versions of the online services or of the interfaces between the online services and the customer's systems on its own responsibility and at its own expense. The adaptation of the customer's systems to new versions must in each case be carried out within six (6) months of the release of the information and specifications for the interface. On expiry of the six-month period, accessibility of the online services or software shall be guaranteed only via the new version of the interface. EGR shall not be liable for any damage caused by the customer's failure to adapt its systems to the latest versions of the online services or interfaces or to do so in good time.

(4) The customer's online connection to the internet or to the data network and all the costs connected with it shall be the responsibility of the customer.

(5) The Customer shall protect its access to the Online Services against access by third parties and by unauthorized persons. (6) The customer is obliged to refrain from anything that could or will jeopardize the online services or their performance. In particular, the customer shall refrain from retrieving or sending data automatically (e.g. by scripts or BOTs) and thereby transferring data volumes or initiating calculation processes that exceed those performed by users as natural persons in the course of ordinary use.

### **VI. Availability**

(1) EGR shall guarantee an availability of the online services from the server infrastructure of EGR or the computer center to the transfer point to the internet or to the public data network of 95% on a month average for each calendar quarter. This shall not apply to times when the server cannot be reached due to technical or other problems which are not within EGR's sphere of responsibility or influence (e.g. force majeure, natural disasters, pandemics, war, strikes, industrial disputes, fault of third parties, government orders, etc.).

(2) EGR shall have the right to restrict or block access to the online services and software if technical changes, maintenance of the system, the security of network operation, the maintenance of network integrity, in particular the avoidance of disruptions to the network, the online services, the software or stored data so require or if the customer fails to comply with its obligations referred to in clause V. paragraphs (5) and (6) hereof or if there is suspicion of a breach of these obligations.

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

(4) Online services which are provided free of charge may be discontinued at any time, in whole or in part, temporarily or permanently.

### **VII. Data backup**

(1) The customer shall be responsible for backing up data and restoring it in the event of loss.

(2) The availability and backup of online services shall be the responsibility of EGR.

### **VIII. Copyright**

All rights to the contents (e.g. texts, pictures, graphics, videos, sounds, animations) of the online services shall be held by EGR or the respective authors. These contents may only be used within the authorized use of the online services according to section III. hereof and under the conditions of the respective author.

### **IX. Trademark rights**

The online services may contain names and trademarks that are protected by law. The rights to the names or trademarks belong

exclusively to the respective owner. No license is granted by publishing the names and trademarks in the online services.

### **X. Data protection**

(1) EGR and the customer shall undertake to comply with the data protection law applicable in each case.

(2) If the customer collects, processes or uses personal data itself or through EGR in the context of the online use of the software in the capacity of controller in the sense of data protection law, it shall first ensure that it is entitled to collect, process or use this data in the specific way in accordance with the applicable law, in particular data protection law, and in the event of a breach of this it shall indemnify EGR against claims by third parties on first demand.

### **XI. Warranty and liability**

(1) The customer is aware that online services, in particular software, are very complex and cannot be developed absolutely error-free. Not every error shall be a defect. EGR shall not be liable for errors that are not defects.

(2) Any defects shall be notified to EGR without delay in a comprehensible manner in writing, by e-mail or by means of a function provided for this purpose in the online service, if any. EGR shall remedy the defect within a reasonable time after receipt of such notification. Insofar as this is not unreasonable for the customer, EGR shall be entitled, in order to remedy the defect, to provide the customer with a new version of the online services or software which no longer contains the defect complained of or which remedies it, or to develop an alternative solution.

(3) If and insofar as tenancy law is applicable, EGR's strict liability shall be excluded in accordance with § 536 I of the German Civil Code. The customer's right to terminate the contract on the grounds of non-provision of use of the service in accordance with § 543 paragraph 2 no. 1 of the German Civil Code and the right to reduce the remuneration shall be excluded as long as the accessibility and/or use of the online services is not restricted or excluded for more than 48 consecutive hours because of the rectification of defects.

(4) EGR shall not be liable for defects based on operating errors and/or occurring after use contrary to the terms of the contract, unless the customer proves that the defects have no causal connection with the events referred to 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) In particular, EGR shall not be liable for:

- the functioning of external data lines;
- malfunctions or failures of third party communication networks;
- failures of the internet or power supply; and
- service restrictions or service failures due to force majeure or to events which make performance considerably more difficult, restrictive or impossible (e.g. force majeure, natural disasters, pandemics, war, strikes, industrial disputes, government orders, fault of third parties, etc.).

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

(8) If it transpires that a defect reported by the customer does not exist or is not due to the online services or software, EGR shall be entitled to charge the customer for the work involved in analyzing and processing it in accordance with EGR's current price list for services.

(9) EGR shall not be liable for the topicality, correctness and completeness of the information provided in online services provided free of charge and the results produced with online services provided free of charge.

(10) EGR shall not be liable for the information created or published by third parties and accessible via the online services (e.g. via a

## **General Terms and Conditions of EasternGraphics GmbH for Online Services "OS GTC" (Status 2023-01-01)**

link/hyperlink). EGR has no influence on the third parties accessible via the online services and on the content (e.g. text; design) of their pages and services. EGR therefore expressly dissociates itself from all contents of third parties which are accessible via the online services of EGR.

(11) The liability of EGR for damage caused intentionally or by gross negligence, for personal injury and for damage caused by the breach of an essential contractual obligation (cardinal obligation) shall be governed by the statutory provisions. Essential contractual obligations shall be those obligations the fulfilment of which is essential to the proper performance of the contract and on the observance of which the contractual partner may regularly rely. In the event of a breach of a material contractual obligation, EGR's liability shall be limited to the foreseeable damage typical of the contract. In all other respects the liability of EGR, on whatever legal grounds, shall be excluded.

(12) EGR's liability for direct, indirect, special or other damage and consequential damage caused by the use of free online services or due to a defect in free online services shall be excluded.

(13) EGR shall not be liable for the loss of data if the damage would not have occurred if data had been properly backed up in the customer's area of responsibility. Data shall be deemed to have been properly backed up if the customer demonstrably backs up its data stocks daily and up-to-date in machine-readable form and thus guarantees that this data can be restored with reasonable effort. EGR's liability for loss of data - unless caused intentionally or by gross negligence on EGR's part - shall be limited to the typical cost of restoration which would have been incurred if data had been properly backed up.

(14) EGR shall not be liable for the dissemination of confidential data stored in EGR's system if and insofar as the dissemination of such data is due to misuse of passwords and logins for which EGR is not responsible.

(15) Insofar as EGR's liability is excluded or limited, this shall also apply to the personal liability of EGR's staff and employees and to third parties acting on EGR's behalf.

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

### **XII. Control rights of EGR**

(1) EGR shall have the right to read, check, process and store the data transmitted and retrieved via the customer's online access if it is to be feared that such data is connected with illegal acts or that the content of the data violates applicable law or morality.

(2) EGR shall be permitted access to the data transmitted and retrieved via the customer's online access if and insofar as this is necessary to check the system.

### **XIII. Commencement, term and termination of contract**

(1) The provisions of this section XIII regarding commencement, term and termination of the contract shall apply if and to the extent that nothing to the contrary has been agreed:

(2) The contract shall commence when EGR provides the service. It shall run for an indefinite period and may be terminated with three months' notice to the end of a calendar year, but not before twelve months have elapsed from the beginning of the contract. The right of termination under section IV. paragraph (3) shall remain unaffected.

(3) The contract for online services, software and apps provided free of charge shall commence with their use and may be terminated at any time without notice; it shall end in any event as soon as EGR discontinues the services or the customer no longer uses them.

(4) The right to extraordinary termination without notice for good cause shall remain unaffected.

(5) Termination shall require the form set out in clause XIV, paragraph (3).

(6) The provisions concerning the limitations and exclusions of EGR's liability shall continue to apply after termination of the contract or the end of the use until the expiry of the limitation periods for claims for damages and/or reimbursement of expenses.

### **XIV. Miscellaneous provisions**

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

(2) To the extent legally permissible, the place of jurisdiction for both contractual partners shall be Erfurt (Germany).

(3) All agreements between the contractual partners must be in writing in order to be effective, whereby the e-mail with sender identification and name signature of the sender satisfies this requirement.

(4) Should individual provisions not be legally effective or lose their legal effectiveness due to a later circumstance, or should a loophole be identified, this shall not affect the legal effectiveness of the remaining provisions. In such cases, both contractual partners shall immediately replace the ineffective provisions with such effective provisions or fill in regulatory gaps with such provisions that correspond to the economic purpose of the contract. Should the contractual partners not succeed in doing so despite proven serious efforts, the statutory provisions of the Federal Republic of Germany shall apply in place of the invalid provisions or loopholes.