

# General Terms and Conditions for EasternGraphics Swiss AG for Online Services (OS GTCs)

(as at 2022-04-1)

## I. Scope of application, supplementary contract terms

(1) The General Terms and Conditions of EasternGraphics Swiss AG, Lerchentalstrasse 27, 9016 St. Gallen, Switzerland ("EGR-Swiss") for online services ("OS GTCs") 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-Swiss and the customer. They shall also apply to the free use of the online services of EGR-Swiss by users (also "customer").

(2) Online services are in particular online applications, cloud services and Internet pages.

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

(4) These OS GTCs also apply if the customer uses the online services with which these OS GTCs are provided.

(5) For the rest, the license conditions of the manufacturer of the respective software and – if the software is installed in the server infrastructure of a third party (e.g. an external computer center) – the contractual provision of such computer center shall apply.

## II. Services

(1) EGR-Swiss shall make the online services available to the customer in accordance with the rights of use specified in clause IV of these OS GTCs for online use via the Internet, a data network or via an app. The online services shall be provided for this purpose by EGR-Swiss 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 (in particular hardware, operating system, software e.g. browser or app) 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 service description conclusively states which functions and services the online services or software have when used in accordance with the contract. Public statements, promotions or advertising shall not constitute a statement of performance or quality.

(3) EGR-Swiss undertakes for the duration of the contract to maintain the online services and to maintain and care for the software and its accessibility in accordance with clause VI of these GTCs. This obligation shall not apply to online services free of charge.

(4) The services are listed exhaustively in sections II, IV and VI of these OS GTCs. Additional services are not part of the contract if they have not been agreed separately.

## III Remuneration and terms of payment

The remuneration to be paid by the customer to EGR-Swiss for services against payment and the terms of payment applicable to them shall be stated separately for the respective services.

## IV. Rights of use (license)

(1) Owner of all rights to and producer of the software as well as operator of the online services is EasternGraphics GmbH, Albert-Einstein-Straße 1, 98693 Ilmenau, Germany (licensor). On the basis of the contract about online services between EGR-Swiss and the customer on the basis of these OS GTCs, 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 duration of the contract about online services, to use the online services including the software provided on their basis in accordance with the provisions of these OS GTCs for the purpose determined by EGR-Swiss for the respective online service by natural persons via user interfaces. Automated use is not permitted. This right of use shall be subject to the timely and complete payment of the agreed remuneration.

(2) The nature and extent of the rights of use for online services or for third-party software which EGR-Swiss makes available to the customer shall be governed by the terms of use of the third party and shall be limited to the duration of the contract. EGR-Swiss shall make the terms of use of the third party available to the customer at his request.

(3) The customer shall not be permitted to enable third parties to integrate the online services into systems other than the customer's systems.

(4) In the event of a breach of the provisions of clause IV. (1) to (3) and clause V. (5) and (6) of these OS GTCs by the customer or by a third party to whom the customer has made use possible, the rights of use shall expire.

(5) The rights of use granted to the customer shall also lapse if and as long as the agreed remuneration for the use of the online services has not been paid to EGR-Swiss or has not been paid in due time. Furthermore, in the event of non-payment or late payment of the agreed remuneration, EGR-Swiss 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.

## V. 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 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 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.

## VI. Availability

(1) EGR guarantees 95 % reachability on a three month average for each calendar quarter of the online services from the server infrastructure of EGR-Swiss 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-Swiss's sphere of responsibility and influence (e.g. force majeure, natural disasters, strikes, industrial disputes, fault of third parties etc.).

(2) EGR-Swiss may restrict access to online services **or to the software** if this is required due to technical changes, system maintenance, 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 or if the customer fails to fulfil its obligations set out in clause V. (5) and (6) of these OS GTCs or if there is suspicion of a breach of these obligations.

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

(4) Free online services may be discontinued at any time in whole or in part, permanently or temporarily

## VII. Update usage rights

The provisions of these OS GTCs shall apply to the use of updates mutatis mutandis.

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### VIII. 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-Swiss's responsibility.

### IX. Copyright

All rights to the contents (e.g. texts, pictures, graphics, videos, sounds, animations) of the online services belong to EGR-Swiss or the respective authors. These contents may only be used within the scope of the authorized use of the online services in accordance with clause IV of these OS GTCs and under the conditions of the respective author.

### X. 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 the publication of the names and trademarks in the online services.

### XI. Data protection

- (1) EGR-Swiss and Customer undertake to comply with the applicable data protection laws and regulations.
- (2) If the customer, by itself or via EGR-Swiss, 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, the customer shall ensure beforehand that it is authorized to collect, retrieve, 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, the customer shall hold EGR-Swiss free and harmless against third party' claims on first demand.

### XII. Warranty and liability

- (1) The customer is aware that online services, in particular software, are very complex and cannot be developed absolutely error-free.
- (2) EGR-Swiss shall be immediately notified of any defect or malfunction in a comprehensible manner and in writing via email or fax. EGR-Swiss will remedy the defect within a reasonable time after receipt of such notification. To the extent reasonable for the customer, EGR-Swiss has the right, in order to remedy the defect, to provide the 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 fallback solution.
- (3) If and to the extent tenancy law applies, liability of EGR-Swiss in accordance with clause 258 et seq. of the Swiss Code of Obligations (OR) is excluded. Customer's right to termination for deprivation of use 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-Swiss is not liable for defects due to operating errors and/or that have occurred after use contrary to contract, unless the customer proves that the defects have not been caused by the events mentioned above.
- (5) EGR-Swiss is not liable for the content accuracy of the customer's data in the online services and/or the software or for any defects or errors resulting therefrom.
- (6) EGR-Swiss is not liable for the functionality of the external data lines to its server, nor is EGR-Swiss 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) The 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 the customer does not actually exist and/or is not caused by the online services or the software, EGR-Swiss may charge the customer for the costs arising from the analysis and other processing in accordance with its current price list for services.

(9) EGR-Swiss shall not assume any guarantee for the topicality, correctness and completeness of the information provided in free online services.

(10) EGR-Swiss shall not be liable for the information created or published by third parties which is accessible via the online services (e.g. via a link/hyperlink). EGR-Swiss has no influence on the link text, the design, possible infringements of applicable rights (e.g. trademark and copyright) and the third parties accessible via the online services. EGR-Swiss therefore expressly distance themselves from all third-party content that can be accessed via the online services of EGR-Swiss.

(11) The liability of EGR-Swiss is limited to wilful intent and gross negligence, regardless of the legal reason. In the event of wilful intent and gross negligence, the statutory provisions shall apply.

(12) The liability of EGR-Swiss for direct, indirect, special or other damages and consequential damages arising from the use of free online services or due to a defect in free online services shall be excluded.

(13) In the event of bodily injury or the breach of an essential contractual obligation („cardinal obligation“), EGR-Swiss will also be liable in the event of slight negligence. If an essential contractual obligation is breached, EGR-Swiss's liability will be limited to the foreseeable damage typical of this type of contract. Essential 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.

(14) EGR-Swiss is not liable for the loss of data if the damage could have been prevented by means of proper data protection for which the 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-Swiss for the loss of data – unless caused by wilful intent or gross negligence on the part of EGR-Swiss – is limited to the typical recovery expenses that would have incurred if proper data protection had been performed.

(15) EGR-Swiss is not liable for the dissemination of confidential data stored in EGR-Swiss'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-Swiss is not responsible.

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

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

### XIII. Control rights of EGR-Swiss

(1) EGR-Swiss has the right to read and check any data transmitted and retrieved via the 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-Swiss has the right of access to the data transmitted and retrieved by the customer via the online access if and to the extent this is required to check the system.

### XIV. Commencement, term and termination of the contract

(1) The provisions of this clause XIV. 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-Swiss. It is concluded for an indefinite period and can be terminated with a three (3) month notice to the end of each calendar month. The contract for online services, software and apps provided free of charge shall begin with their use and may be terminated at any time without notice; it shall end in any case as soon as EGR-Swiss discontinues the services or the customer no longer uses them.

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

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

(5) The provisions on the limitations and exclusions of liability of EGR-Swiss shall continue to apply after termination of the contract or use until expiry of the limitation periods of claims for damages and/or reimbursement of expenses.

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### **XV. Miscellaneous provisions**

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

(2) The place of jurisdiction for both contractual partners shall be St. Gallen (Switzerland) 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 with sender's name signature fulfilling this requirement.

(4) In the event any provision is not effective or loses its effectiveness due to a later circumstance, or if a loophole 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 loophole 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 loopholes shall be replaced with the legal provisions of Switzerland.