

# General Terms and Conditions of Meteomatics GmbH

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## 1. General provisions, scope of application

1.1. These general terms and conditions (hereinafter "**terms**") apply to all business relationships between Meteomatics GmbH (hereinafter: "Meteomatics") and its customers. They apply in particular to the sale and delivery of meteorological measurement and forecast data (hereinafter referred to as "**data**"), as well as the creation of individual forecasts or software (hereinafter "**individual forecasts/software**") and consulting services (hereinafter "**consulting services**").

1.2. They also apply to future business transactions with the same customer, without Meteomatics having to point this out in each individual case.

1.3. Meteomatics does not recognise any customers general terms and conditions or general purchasing conditions that differ, conflict, or add to these terms; these are only effective if Meteomatics has expressly agreed to their validity in writing. This requirement applies even if Meteomatics provides its services without reservation while being aware of said terms and conditions.

1.4. These terms apply even if Meteomatics provides its services without reservation while being aware of customer's differing terms and conditions.

1.5. These terms shall take precedence as stipulated in Meteomatics' order confirmations.

1.6. (3) These terms shall apply exclusively to entrepreneurs as defined in §14 of the German Civil Code (BGB).

## 2. Contract conclusion

2.1. Offers from Meteomatics are subject to change and are non-binding, unless otherwise stated. This also applies if descriptions, technical documentation (e.g. calculations), other product descriptions or documents, including those in electronic form, have been provided to the customer.

2.2. Customer orders are only binding upon Meteomatics when the customer has confirmed the order in writing.

### **3. Description of services, delivery times, delivery subject to availability, force majeure**

3.1. Meteomatics expressly advises the customer that the data does not exclusively consist of official measurements and forecasts such as those created, issued and/or disseminated by government agencies.

3.2. The more detailed description, scope, procedure and objective of the services to be provided by Meteomatics are derived from the order confirmation, its appendices and any service descriptions. All of the documents mentioned are part of the contract concluded between the parties.

3.3. Dates named by Meteomatics in the order confirmations or dates agreed between the parties as part of ongoing or recurring services are planned dates, unless expressly agreed as fixed dates. Partial performances are permitted to a reasonable extent.

3.4. Meteomatics also obtains data from third-party providers. If, for reasons for which it is not responsible, Meteomatics does not receive the services from these third-party providers, or does not receive them correctly or in good time, Meteomatics is entitled to obtain this information from other sources, e.g. in the event that station values are not supplied, to obtain these values from the nearest weather stations and/or to transmit calculated values for the location of the weather station. If replacement data is not available, Meteomatics is entitled to postpone its services for the duration of the hindrance or withdraw from that part of the contract that has not yet been fulfilled either in whole or in part.

### **4. Delivery, provision**

4.1. The delivery of services takes place electronically by e-mail or FTP/SFTP and/or by customer access via a Meteomatics interface (weather API), unless another delivery means has been agreed.

4.2. Meteomatics is not obliged to check the data received by the customer.

4.3. Meteomatics ensures that its services per §4.1 will be available 99% of the time measured over one year. When calculating the availability, the time for appropriate maintenance work is not taken into account. Planned maintenance work is usually carried out by Meteomatics during low-usage periods with suitable advance notice provided to the customer if it is expected to affect the availability of the services. In the case of electronic delivery by email or FTP/SFTP, the availability is based on when the data is sent by Meteomatics; if the data is obtained through customer access, the availability is at the time the customer accesses the Meteomatics interface (Weather API).

## **5. Licence**

5.1. Meteomatics hereby grants the customer the non-exclusive right to use the services provided, which is limited in time to the term and geographical area covered by the contract and objectively to the limited purpose stipulated in the contract. Any further use, in particular a transfer of the licence to third parties or change, editing and/or publication of the data, either in whole or in part, is not permitted unless expressly agreed. The data and software may, however, be passed onto third parties and/or published if and only to the extent that the customer is legally obliged to do so. Archived data can also be used for internal purposes after the end of the contract.

5.2. If the customer violates the terms of this licence, Meteomatics is entitled to an extraordinary termination of the contract. In addition, Meteomatics can claim a flat penalty of €5,000 (in words: five thousand euros) for each individual case of damage, regardless of the actual damage. The customer bears the burden of proof that Meteomatics suffered no damage or less damage. Meteomatics reserves the right to prove that greater damage has occurred and in such a case Meteomatics may assert further damages beyond this penalty.

5.3. The customer must observe copyrights, ancillary copyrights or other rights of Meteomatics.

## **6. Claims for defects/liability**

6.1. Meteomatics provides its services according to the recognized rules of meteorological science and technology. However, due to a large number of factors influencing the weather, the actual weather situation cannot be predicted with 100% accuracy. Also, it is not possible to retrace the weather situation exactly or to describe it exactly.

6.2. Rather, the services of Meteomatics represent forecasts or attempts to reconstruct historical weather processes that are based on experience with certain probabilities. Deviations in the forecast or reconstruction from the actual weather situation cannot be avoided and do not constitute a defect.

6.3. Meteomatics is liable for simple negligence in the event of injury to life, limb or health, as well as obligations. the fulfilment of which enables the proper execution of the contract in the first place and on which the customer can regularly rely (essential contractual obligations).

6.4. Otherwise, Meteomatics is only liable for damage resulting from its intentional or grossly negligent actions.

6.5. In the event of a slightly negligent breach of essential contractual obligations, Meteomatics is only liable for typical, foreseeable damage. All further claims of the customer are excluded.

6.6. Insofar as the liability pursuant to the preceding provisions is limited, such limitation shall also apply to the personal liability of employees, workers, co-workers, representatives and assistants of Meteomatics.

6.7. The above limitations of liability do not apply to damage resulting from injury to life, limb or health or in the case of mandatory liability under the Product Liability Act.

6.8. All claims for defects by the customer expire within one year, calculated from the start of the statutory limitation period.

6.9. The limitation period in the event of delivery recourse according to §§ 445a, 445b, 478 BGB remains unaffected; it is five years from delivery of the defective item to the customer.

## **7. Prices and payment terms**

7.1. Meteomatics provides its deliveries and services for a fee. The amounts can be found in the price list valid at the time the contract is concluded, unless otherwise stated in a written offer or agreement.

7.2. For ongoing or recurring services, the prices for the agreed term apply as firmly agreed. If, in the case of ongoing or recurring services, the prices in the price list for the agreed services change before or at the beginning of a new term, Meteomatics will inform the customer of this in writing, taking into account the agreed period of notice, and submit a new offer to the customer under the changed conditions. If the customer does not accept the offer by the beginning of the new term at the latest, Meteomatics' obligation to provide ongoing or recurring services ends.

7.3. Unless otherwise stated, all prices are exclusive of VAT.

7.4. Unless otherwise agreed in writing, the agreed remuneration is due for payment within 10 days of invoicing without any deduction.

7.5. The customer is only entitled to offset or exercise retention rights insofar as the respective counterclaim is undisputed, legally established or recognised in writing by Meteomatics. The customer is free to assert excluded claims in court.

## **8. Termination**

8.1. Contracts for ongoing or recurring services can be terminated with a notice period of three months prior to the end of the service period, unless otherwise agreed in writing. If the contract is not terminated in due time, it will be extended by a further contractual year.

8.2. The right to extraordinary termination for good cause will remain unaffected. Good cause exists particularly if 8.2.1. one party violates its obligations under the contract and these terms, although the other party has requested in writing that the breach of duty be terminated by setting a reasonable deadline;

8.2.2. insolvency proceedings are opened against the assets of a party or the insolvency application is rejected for lack of assets;

8.2.3. a party permanently ceases its business activities.

## **9. Final provisions**

9.1. German law applies exclusively to contracts, excluding the provisions of international private law and the United Nations Convention on Contracts for the International Sale of Goods (CISG).

9.2. The place of fulfilment and jurisdiction for disputes is Berlin. Each party is entitled to seek legal redress against the other at its registered office.

9.3. Meteomatics uses customer data that it processes in accordance with the provisions of German data protection law and the Meteomatics privacy policy published on the Meteomatics website.

9.4. Should regulations of these terms and conditions be or become void, ineffective or impracticable, this does not affect the effectiveness or practicability of the remaining regulations.