

General Terms and Conditions for Sale and Delivery Meteomatics AG

as of December 2016

§ 1 General

1. These General Terms and Conditions for Sale (“Terms”) apply for any business relation with customers (“Customer”) of the Meteomatics AG (“Meteomatics”). These Terms apply particularly for the sale of meteorological measurement and forecast data as well as the provision of individual forecasts, software (“Services”) and consulting. These Terms apply also for future relations with the same Customer without further notice by Meteomatics.
2. The Customer’s general terms and conditions that are inconsistent with the Terms set forth herein shall only be applicable to the extent Meteomatics has explicitly approved in writing. This also applies when Meteomatics is providing Services for the Customer while being familiar with the Customer’s general terms.
3. To the extent that there is any conflict between these Terms and any individual agreement with the Customer (including subsidiary agreements, supplements and modifications), that individual agreement shall have always precedence over these Terms. A written document and a written acknowledgement by Meteomatics is necessary. Changes of these Terms will be announced via e-mail or any other written form to Customers in current business relationship with Meteomatics. Changes are effective one month after their announcement. Within this period Customers may object in written form. Meteomatics will also point out this right when announcing new Terms. In case of objection Meteomatics has the right to terminate the contract extraordinarily within the period of one month.

§ 2 Conclusion of Contracts

1. Offers by Meteomatics are nonobligatory and tentative unless stated otherwise. This also applies in the case when descriptions, technical documentation (e.g. calculations, estimations) other product descriptions or records – also in electronic form – have been dedicated to the Customer.
2. The order of services by the Customer is seen as binding offer unless indicated otherwise in the order or other agreements.
3. Meteomatics is authorized to accept the order within 4 calendar weeks after receipt. If the acceptance is declared after this 4 weeks period and the Customer does not see himself as bound to his order, a declaration in written form is necessary. Otherwise the contract is seen as closed.
4. The acceptance of the order takes place in written form – also electronic – from Meteomatics. Minor alterations of e.g. technical or optical details are subject to change and do not justify a change to the order at equivalent service.

§ 3 Specification of Services, Delivery Deadlines, Proviso of Delivery Capacity

1. Meteomatics hereby emphasizes that the delivered measurements and prognoses are not officially authorized by e.g. state services. If the Customer needs or is obligated to use such official data he maybe cannot fulfill these requirements with a business relationship to Meteomatics.
2. Meteomatics renders their service with compliance to established standards of the meteorological science and technology. Due to various influences on the weather, current weather conditions may not be forecasted precisely. Furthermore it is not possible to reconstruct certain past weather conditions exactly. Meteomatics' Services shall be seen as forecasts and reconstructions based on experience and a certain probability. Differences to the actual weather conditions cannot be avoided.
3. Meteomatics shall use their best endeavors to conclude as speedily as possible contracts with a unique delivery of data or services. Regular deliveries of data or services will be conducted at dates agreed in writing between Meteomatics and the Customer.
4. Meteomatics receives meteorological information and data from third-party providers. If Meteomatics unindebted does not receive these information and data not or not in time, Meteomatics is authorized to obtain the information otherwise, if possible. If for example, station observation data is not available, the usage of nearby station's data or calculated data is permitted. If an alternative data acquisition is not possible, Meteomatics is authorized to postpone its services or to withdraw from the contract in parts or completely. The same applies if the services by Meteomatics cannot be rendered due to an act of God or due to interruption of transmission paths out of their system boundaries (especially the Internet or othertelecommunication networks).

§ 4 Delivery, Provision

1. The delivery of services and data is conducted in electronic form unless stated otherwise. The Customer retrieves the data autonomous. Meteomatics is not required to verify the data reception at the Customer.
2. Meteomatics guarantees the delivery of data of 98.5% in respect to one year. For the calculation of this availability, reasonable maintenance times will be unnoted. Necessary preventive maintenance work will usually be carried out by Meteomatics in times of little usage and will be communicated to the Customer upon reasonable notice in writing, as far as the availability of the services is affected. Cases described in §3 No. 3 are also respected accordingly.

§ 5 Right of Use

1. Meteomatics grants the non-exclusive right to the Customer to use the provided services. This right is limited temporally to the duration of the contract, spatially to the contractual territory and factually to the contract purpose. Any further use, especially the transfer to third parties of the usage rights granted, any modifications, edits and/or public disclosure entirely or in parts is not allowed unless stated otherwise. Transmission of software to third parties or public disclosure is allowed if the Customer is legally bound. The right to archive data beyond a period of six months after delivery is excluded unless the Customer is legally bound to archive the data.
2. Meteomatics is entitled to terminate the contract if the Customer commits a material breach under these Terms. Meteomatics is authorized to claim damages in the general amount of CHF 20'000 (in words: twenty thousand Swiss francs) per case independent from the actual damage. The Customer holds the burden of proof to prove that there was a smaller or no damage caused. Meteomatics holds the burden of proof if a higher damage was caused. In this case, Meteomatics can also claim damages beyond.
3. In case of a reasonable suspicion of an infringement of the rights of use granted to the Customer, the Customer is required to support Meteomatics in the investigation and prosecution of the suspicion in reasonable scope, especially by the supply of information and documents, where reasonably requested by Meteomatics.

§ 6 Claim for Defects, Liability

1. Unless stated otherwise, the legal provisions apply for the rights of the Customer in case of defects. The basis for the defect liability is primarily defined by the agreement about the condition of the service. This agreement about the condition of the service is represented by the contents of these Terms, especially §3 (with reservation of §1 No. 3). Meteomatics renders their service with compliance to established standards of the meteorological science and technology. Meteomatics assumes no responsibility that the delivered forecasts will be exact. So far the liability of Meteomatics is excluded.
2. Meteomatics is liable unlimited for fraud, willful intent and gross negligence and in case of defects resulting to damage of life, injuries to the body and the health.
3. Meteomatics is not liable in case of slight negligence.
4. Meteomatics is not liable in any case for lacking commercial success, lost profit and indirect or other consequential losses and claims of third parties.
5. As far as the liability of Meteomatics is excluded or limited, the same applies for the liability of helping personnel.
6. The right of the Customer to withdraw from the contract in case of a breach of duty that is not a defect remains unaffected.

7. Meteomatics offers their services only to the Customer. A disclosure to a third party, even if permitted, takes place on the Customer's own responsibility. Meteomatics assumes no responsibility for such third parties. If Meteomatics is sued for damages based on any domestic or foreign legal cause, the Customer indemnifies Meteomatics of the third party's claim and all associated legal defense costs. The same applies in the case of transfer or public disclosure of services or data by the Customer in contrary to the agreement.

§ 7 Prices, Terms of Payment

1. Meteomatics renders their service and deliveries for a consideration. The amount can be taken from the currently applicable price list, unless agreed otherwise. The legal value added tax is to be paid on all prices, unless stated otherwise.
2. Meteomatics reserves the right to adjust prices reasonably, in case of cost reductions or increasing costs after the conclusion of the contract. These will be proved to the customer on demand.
3. The agreed compensation is to be paid within 14 days after invoicing without any discounts, unless stated otherwise.
4. The Customer shall only be entitled to offsetting rights or rights of retention if their counterclaims have been established in law and have been recognized by Meteomatics in written form.

§ 8 Termination

1. Concluded contracts with regular deliveries of services can be terminated within a period of four weeks at the end of the calendar year, unless stated otherwise.
2. Either party may terminate the agreement with immediate effect and at any time if:
 - a. one party of the contract violates the regulations of these Terms or the concluded contract;
 - b. insolvency procedures are initiated over the assets of one party of the contract or the insolvency application is being rejected for a lack of assets or judicial settlement proceedings are initiated or there exist particular signs of a possible insolvency;
 - c. one party ceases operations ultimately.

If Meteomatics terminates the contract extraordinary for reasons attributable to the Customer, no pro-rata refund will be made of already paid compensations.

§ 9 Proper Law, Place of Performance, Jurisdiction, Data Protection

1. Exclusively Swiss law excluding the UN purchase rights (CISG) comes into application.
2. Place of fulfillment and sole court of jurisdiction for all disputes is St. Gallen insofar as is permitted by law. This also applies for the dunning procedure.
3. Meteomatics uses the Customer's data during order implementation in accordance with Swiss privacy regulations.

§ 10 Severability Clause

Should any part of this Terms be rendered invalid or be not executable, such invalidation of such part or portion of these Terms should not invalidate the remaining portions. The parties of contract are in this case required to agree upon a valid and executable regulation that comes commercially close to the invalid or not executable parts. The same shall apply in the case of any legal loopholes.