

## **General Terms and Conditions (GTC) of entergon GmbH & Co. KG**

**Date 23.08.2017**

### **1. Scope of the GTC**

- 1.1. The deliveries, services and offers of **entergon GmbH & Co. KG** (hereinafter "Provider") are exclusively based on these GTC. They are an integral part of all contracts concluded with the Provider. Order confirmations of the Customer with reference to his business and/or purchase conditions are explicitly contradicted.
- 1.2. Any regulations contained in contracts concluded with the Provider that contradict individual regulations of these GTC shall take precedence over these GTC. The validity of the general terms and conditions shall remain unaffected by this.
- 1.3. The Provider is entitled at any time to amend or supplement these general terms and conditions with an appropriate period of notice. Changes and additions to the GTC can be viewed on-line at any time on the Provider's Website: [www.entergon.de](http://www.entergon.de)

### **2. Scope and performance of contracts**

- 2.1. Orders shall be binding for the Provider from the moment the Provider confirms them within 4 weeks.
- 2.2. The Provider can accept subsequent changes or extensions of an order within 5 working days. In the absence of other agreements, the Provider shall invoice the additional services based on the fee list in the event of approval.
- 2.3. Insofar as contracts concluded with the Provider include the procurement of server capacities, uninterrupted accessibility and availability of the servers of a third party Provider shall not be contractually due. In this respect, the Provider shall only be responsible for reasonable efforts and precautions in accordance with the state of the art in science and technology to ensure that the servers are as completely accessible and available as possible. Circumstances beyond the control of the Provider, such as the availability and proper functioning of transmission paths on the Internet and in public line networks, shall under no circumstances be subject to contractual agreements or assurances.
- 2.4. In the event of the dispatch of delivery items, the price and performance risk shall pass to the Customer when they are handed over to a transport company.
- 2.5. The Provider is entitled to make use of carefully selected and supervised vicarious agents - in whole or in part - in the fulfilment of contractual obligations.

### **3. Obligation of the Customer to cooperate**

- 3.1. The Customer shall support the Provider in the preparation and fulfilment of the order, check the documents submitted and inform the Provider of the result of the review in order to ensure compliance with the agreed schedule.

- 3.2. Minor deviations from the project definition which do not affect the future use of the work shall not affect compliance with the agreed delivery date. Such deviations shall not constitute a violation of the particular project definition.

## **4. Data, responsibility and right of refusal**

- 4.1. Customer data may consist of text, graphic, audio and video documents.
- 4.2. In terms of the legal admissibility and harmlessness of all content submitted to the Provider for publication, the Customer shall bear the sole legal responsibility in the internal relationship between the parties.
- 4.3. The Provider reserves the right to reject orders in whole or in part if their content violates laws, official regulations, rights of third parties, good taste etc..
- 4.4. If claims are made against the Provider by third parties due to actions, omissions or content made available by the Customer, the Customer shall indemnify the Provider against such third-party claims and compensate the Provider for any damages incurred if and to the extent that the Customer is responsible for the claims. The Customer is obliged to support the Provider in good faith with information and documents in legal defence against third parties. The Provider reserves the right to check whether orders violate the rights of third parties.
- 4.5. Furthermore, the Provider shall not be liable for damages incurred by the Customer as a result of misuse or incorrect use of the data stored on the Provider's servers, unless the Provider acts intentionally or with gross negligence, and with the exception of culpable injury to life, limb or health. Liability under the Product Liability Law shall remain unaffected.
- 4.6. The Provider reserves the right to reject or block orders - including individual updates within the scope of an order - if their content violates laws or official regulations or if their content has been objected to in a complaint procedure or if their publication is unreasonable for the Provider due to their content, origin or technical form.

## **5. Data supply**

- 5.1. The Customer shall ensure the timely delivery of the documents, data and manuscripts in the agreed format.
- 5.2. If data is to be processed by the Provider in accordance with the order, the Customer shall receive control overviews by e-mail or web preview before publication. In the event of complaints, the Customer shall notify the Provider immediately.
- 5.3. Delivery to the Provider may be made electronically, by post or by courier. The costs for this shall be borne by the Customer.
- 5.4. The Provider's obligation to store the data received shall end three months after its publication.

## **6. Provision of domain names and web space**

- 6.1. Within the scope of a particular order, the Provider also provides the brokerage of the establishment of Internet domain names through so-called Internet Service Providers (ISP). Successful provision is not due. The Provider also cannot guarantee that the domains applied for and delegated by the Customer are free of third party rights or will continue to exist in the long term.
- 6.2. The data transmitted by the client to the Provider for reservation and/or registration of a domain name shall be forwarded to the ISP, stored there electronically and made accessible to the registry databases.
- 6.3. In the allocation of domain names, the allocation guidelines of the responsible ISP apply. Upon request, the Customer shall receive these.
- 6.4. The client shall cooperate with the Provider, in particular insofar as this is necessary for the proper registration, modification or deletion of a domain, especially with regard to compliance with the guidelines of the registry and the requirements of the respective ISP. For damages which the Provider suffers directly or indirectly through a culpable violation of the Customer's duty to cooperate, the latter shall be liable to pay compensation.
- 6.5. The Customer has no claim to reservation or registration of the desired domain name against the Provider. The responsibility for legal consequences of any kind resulting from the reservation and registration of the domain name shall lie exclusively with the Customer.
- 6.6. The Provider shall not be liable for defects or errors in the system of the referred ISP or for his culpable misconduct, as far as there is no culpable behaviour on the part of the Provider.
- 6.7. Should a third party complain to the Customer about an infringement of rights by a domain name, the Customer shall immediately inform the Provider. The Customer shall indemnify the Provider against claims for compensation by third parties which are based on an inadmissible use of the domain name for which the Customer is responsible.
- 6.8. If the Customer receives individual passwords from the Provider, e.g. for access to a personal website or a content management system, he shall not disclose these to third parties and keep them carefully in order to prevent misuse by third parties. In the event of loss of the password or if he becomes aware that third parties have gained knowledge of the password, he shall inform the Provider immediately. The Customer shall be liable for all damages resulting from misuse of the password, unless he can prove that he is not at fault. In all other respects, the limitation of liability pursuant to Section 11 of these GTC shall apply.
- 6.9. Due to technically necessary maintenance work, the data server of a Provider commissioned by the Provider may be subject to short downtimes. A downtime of up to 2 % of the annual operating time shall not entitle the Customer to any reduction.
- 6.10. In the event of force majeure or the occurrence of disruptions that are demonstrably beyond the Supplier's control or responsibility (e.g. in the event of disruptions by Deutsche Telekom or the network operator), the Supplier shall be released from its obligation to fulfil orders and to pay damages.
- 6.11. Contracts for the brokerage of a domain with automatic renewal shall be extended by one year in each case, unless they are terminated in writing in due time. The period of notice shall be one month.

## 7. Guarantee of rights

- 7.1. The Customer guarantees that he has all rights necessary for the publication of the data and contents transmitted to the Provider.
- 7.2. The Customer transfers to the Provider all copyrights, ancillary copyrights and other rights necessary for the agreed use on the Internet, in particular the right to reproduce, distribute, transmit, process, broadcast, extract from a database and retrieve, in terms of time and content to the extent necessary for the performance of the order. The aforementioned rights shall in all cases be transferred without any local restrictions and entitle the user to publish them by means of all known technical procedures and all known forms of online media. The Provider hereby accepts this transfer.

## **8. Completion and delivery dates, partial services**

- 8.1. In the event of a change in an order, the Supplier shall no longer be bound by previous delivery dates.
- 8.2. The Provider shall not be liable for delays which cannot be avoided with careful operational management, in particular not for unforeseeable delays due to force majeure - this includes in particular technical disruptions such as equipment failure through no fault of its own, war, civil unrest, industrial action, fire, floods and other natural disasters as well as the interruption of the power connection, traffic disruptions and the like. In all other respects, the Customer's claims shall be limited to a reduction in the agreed price appropriate to the delay or to withdrawal from the contract if the agreed service would not have any value for the Customer due to special circumstances due to the delay, unless the delay is due to intent or negligence. The general limitations of liability shall remain unaffected by this.
- 8.3. The Provider shall in any case be entitled to invoice partial services if these have been agreed.

## **9. Prices, payment**

- 9.1. Unless otherwise agreed, the Supplier's currently valid fees in accordance with the list of fees attached shall apply to the performance of orders. All prices shall be exclusive of the statutory value added tax.
- 9.2. When creating websites, two content and graphic correction runs of the data are possible, each further correction is settled as an author correction at the latest announced hourly rates. Additional meetings, courier trips and picture licences shall not be included in the costs.
- 9.3. Arrival and departure times, expenses, travel and similar costs shall be invoiced separately. Travel expenses, overnight stays and expenses shall be invoiced on a time and material basis. Flights within Europe shall be in economy class, intercontinental flights in business class. Rail travel shall be in 2nd class. Trips by car shall be charged at 0.50 Euro/km. Travel hours starting from a total duration of six hours shall be billed like working hours.
- 9.4. If advance or instalment payments have been agreed, but are not made on time, the Provider may take the measures provided for in the contract and dissolve the contract without compensation after an unsuccessful reminder. The same provision shall apply in the event of a debt-restructuring moratorium or the opening of insolvency proceedings if the Customer or the insolvency administration does not provide security for the payment of future invoices. A fee owed by the Customer shall be due upon invoicing and shall be paid within 30 days.

- 9.5. Cancellations and terminations shall be made in writing. Work already performed shall be invoiced by the Supplier according to the previously agreed fees or according to the particular fee list.
- 9.6. When arranging a reservation or registration of domain names, the fees shall be charged in advance for one year; a partial refund in the event of premature termination of the contract shall not be possible.
- 9.7. Price changes due to price changes by the contractual partners of the Provider are reserved during the contract period; in the case of price increases, the client shall be entitled to withdraw from the contract. The right of withdrawal shall be exercised within 14 days of receipt of notification of the price increase.
- 9.8. If there is a continuing obligation between the parties, the following provision shall apply: If the date of the start or end of the contract does not coincide with the first or last day of a month, or if this does not coincide with the start or end of the year, segment-related fees shall be billed either pro rata or per day, based on 30 days or pro rata per month based on twelve months. If the Customer is in default with a service, interest shall be charged in accordance with § 288 BGB (German Civil Code). At the same time, the Provider reserves the right to prove and assert higher damages. In the case of cashless payment by the Customer (e.g. bank transfer or cheque), fulfilment only occurs with the final credit to the Provider's account. Bills of exchange are generally not accepted.
- 9.9. The Customer may only offset claims which are recognised or legally established.

## 10. Warranty

- 10.1. If the cooperation of the Customer is necessary for supplementary performance, the period for supplementary performance shall not begin until the Customer provides cooperation. The expenses necessary for the purpose of subsequent performance shall be borne by the Supplier. If subsequent performance is not successful within a reasonable period of time, the Customer may withdraw from the contract and/or claim damages and/or demand a reduction in payment. The same shall apply if the supplementary performance by the Provider fails. For all further claims, in particular claims for damages, the limitation of liability pursuant to Section 11 shall apply.
- 10.2. All warranty claims shall become statute-barred 24 months after receipt of the work result by the Customer, unless claims for tort are asserted or the law otherwise prescribes a longer warranty period as mandatory.

## 11. Liability

- 11.1. The Provider shall only be liable to the Customer in accordance with the following provisions:
- 11.2. The Provider shall be liable in accordance with the statutory provisions a) for intent or gross negligence, b) for culpable injury to life, limb or health, c) in accordance with the provisions of the Product Liability Act, and d) to the extent of a guarantee assumed by the Provider. In the event of a slightly negligent breach of an obligation, the fulfilment of which is essential for the proper performance of the contract and on whose compliance the registered user regularly relies and may rely (so-called cardinal obligation), the liability shall be limited in amount to the damage foreseeable and typical for the type of transaction in question. Any further liability is excluded. The above limitation of liability also applies to the personal liability of employees, representatives and bodies of the Provider.

- 11.3. Damages of up to 2,000.00 Euro for private users and up to 10,000.00 Euro for business users shall be regarded as foreseeable damage. If several actions or related complexes of actions take place within a period of twelve calendar months, a foreseeable total loss of up to EUR 5,000.00 shall apply in the case of private users and up to EUR 25,000.00 for business users for this period.
- 11.4. Insofar as the Provider instructs the Customer to commission external services in the Customer's name and for the Customer's account, the Provider shall not be liable for the third party's services. Any liability on the part of the Provider for damages resulting from the use of third parties is excluded. In addition, the Customer shall reimburse the Provider for the additional expenses caused by the third party.

## **12. Copyrights and other protective rights, source code**

- 12.1. Copyrights or comparable property rights associated with the activity of the Provider are explicitly created in the person of the Provider. The Customer shall only have a claim to the transfer of such rights or rights resulting therefrom, in particular exploitation rights, if this has been explicitly agreed in writing in individual cases. The same applies to the transfer of the source code of the software created by the Provider and the tools used for its use. The usage rights to the programming know-how, the development methods invented, generally usable modules, such as programme routines and drivers, as well as all other marketable property rights remain with the Provider, irrespective of the agreed usage rights to the individual software.
- 12.2. Insofar as third parties are entitled to the rights, the Provider shall guarantee that it has the corresponding rights of use and distribution.

## **13. Data protection and confidentiality**

- 13.1. For the purposes of this Agreement, "Confidential Information" shall mean any information obtained or received by either party in the course of the business relationship between the parties with respect to goods or services, distribution channels, Customers, business processes or financial information distributed or produced by the other party and any other information identified as confidential by the party to which it relates or whose confidentiality results from the circumstances.
- 13.2. Information not deemed confidential within the meaning of this Agreement is any information that (a) was already known to the Receiving Party at the time of becoming aware of the Cooperation, (b) became or becomes publicly known without the Receiving Party violating this Agreement, (c) was developed by the Receiving Party independently of the Party related thereto and/or the Customer and without direct or indirect use of the Confidential Information, (d) made available to the receiving party by a third party without breach of a confidentiality obligation towards the party concerned, (e) in respect of which the party concerned has declared in writing that it is not confidential information, or information which (f) is disclosed on the basis of an enforceable order by a German court or a German authority, or (f) is disclosed to the receiving party by a third party without breach of a confidentiality obligation towards the party concerned, with the receiving party being obliged to inform the other party of this order in writing without delay.

- 13.3. The parties shall treat confidential information as strictly confidential and protect it from third parties' knowledge and treat it as equal to their own company secrets. Any disclosure to third parties shall only be permitted if the respective third party is previously obligated in writing to maintain confidentiality in a manner corresponding to this clause. These rights also apply to all legally affiliated companies pursuant to §§ 15 ff AktG.
- 13.4. The Provider shall observe the data protection regulations when processing the Customer's data. Once the Provider becomes aware of personal data within the scope of the provision of services for which the Customer is the responsible party within the meaning of the BDSG, the Customer shall conclude an agreement on order data processing with the Provider before the start of the performance of services. In all other respects, the Customer - unless he explicitly objects – shall agree that the Provider stores master and connection data for the duration of the contractual relationship, insofar as this is necessary to fulfil the purpose of the contract, for example for billing purposes. The data shall be deleted as soon as it is no longer required for the purposes listed. Billing data shall be deleted by the Provider within the applicable statutory period.

## 14. Miscellaneous

- 14.1. Verbal ancillary agreements shall only apply if confirmed in writing.
- 14.2. The Customer may transfer rights arising from the Contract to third parties only with the consent of the Provider. Also, all legally affiliated companies pursuant to Sections 15 et seq. of the German Stock Corporation Act (AktG) are not considered third parties.
- 14.3. The Customer agrees that the Provider may also effectively address declarations (exception: declarations requiring form, in particular termination) to him electronically (e.g. by e-mail).
- 14.4. The Provider is granted the right by the Customer to use the respective orders in his on-line portfolio, his press releases and other materials effective for advertising. The Customer agrees that the Provider, may use the company name and logo of the Customer as part of his reference list.

## 15. Final provisions

- 15.1. The relationship between the Customer and the Provider shall be governed exclusively by German law, with the exception of the provisions of German conflict of laws regulations.
- 15.2. The place of performance for all services of the Provider shall be the registered offices of the Provider in Wehrheim.
- 15.3. The exclusive place of jurisdiction for disputes with merchants and legal entities under public law shall be the registered offices of the Provider.