

**General Terms of Trade  
of Austro Control Österreichische Gesellschaft  
für Zivilluftfahrt mit beschränkter Haftung (ACG)  
for the provision and the exploitation of  
weather data related to present and past**

**1 Scope**

- 1.1 ACG's activities, deliveries, offers and contracts concerning provision and exploitation of weather data related to present and past are exhaustively based on this General Terms of Trade. No other terms of trade and/or conditions shall be valid unless they were expressly agreed upon in writing. The fact that we do not respond to a draft condition/term sent by you does not imply our consent nor may the General terms of contract contained herein be changed thereby. Act of ACG's employees or other third parties attributable to ACG in fulfilment of the respective contract are not to be judged as consent or acceptance to/of terms of trade diverting from the General Terms of Trade contained in this document.
- 1.2 These General Terms of Trade shall not apply to ACG's activities, deliveries, offers and contracts concerning ACG's duties imposed by Austrian administrative law or in-house procurement of the Republic of Austria. This includes without limitation e.g. provision of meteorological services for aviation.

**2 Object of agreement**

- 2.1 ACG provides Customer within the framework of its technical and procedural capabilities with weather data related to present and past, whereas – if not stated in a general way – kind and quality of the data to be provided in a specific case, content of the rights to use, selection of the level of use, remuneration as well as other provisions are contained in the respective offer respectively contract and in addition the current price list; properties in excess thereto shall not form part of ACG's duties.
- 2.2 Weather data shall comprise including without limitation measured, observed data, refined meteorological weather information as well as meteorological products related to present and past.
- 2.3 Customer is solely responsible for selection and procurement of hard-/software as well as the operational environment required for display of weather data; Customer shall bear the risk that the software used by it is in line with its requirements and needs as concerns display of data. Save as provided for in an express written agreement, ACG shall not be obliged to provide consultancy services relating to selection and/or specification of software.

**3 User categories, type of use**

- 3.1 The respective level of authorisation as well as the remuneration to be paid is determined by the user category applicable to Customer („model of legal levels“). Choice of category is to be done in the respective offer respectively contract; the remuneration due is contained in the price list annexed thereto.
- 3.2 „End user“(level 1): subject to payment of the agreed remuneration end user is provided with data for its personal use (= use not for or in the provision of meteorological or climatological services) and it shall be granted the personal non-exclusive, non-transferable, non-assignable, right to use the data for its personal purposes. In the framework of level 1 customer shall not be entitled, to exploit the weather data for commercial purposes, including without limitation the provision of meteorological or climatological services. Customer shall neither disseminate the weather data in crude or refined form with or without remuneration

nor use them in a publicly accessible form of presentation. Including without limitation the compilation and creation of weather forecasts out of the weather data as well as their dissemination to third parties shall not be allowed.

- 3.3 „Broadcaster/Publisher“(level 2): subject to payment of the agreed remuneration and in excess to the rights already contained in para 3.2 broadcaster/publisher“ shall be granted the non-exclusive, non-transferable, non-assignable, right to disseminate the weather data provided in unrefined form via radio broadcasting, television or print media to an auditorium not known to it, whereas the weather data shall be marked with the label provided by ACG. In the event of a mere parole dissemination a verbal announcement explaining the origin of the weather data shall be contained (e.g. short announcement via radio that weather data have been provided by ACG). Dissemination via internet, cellular or outside radio, television or print media in other electronic mass media as well as modification or refinement of weather data shall be excluded. Insofar the dissemination of weather data is not done in printed form, dissemination shall be restricted to a single broadcasting event only, lasting not longer than ten seconds; permanent repetition (like dissemination in an infinite loop) shall not be allowed. Furthermore customer is not entitled to generate graphic or written forecasts for dissemination purposes.

- 3.4 „Service Provider“ (level 3): subject to payment of the agreed remuneration and in excess to the rights already contained in para 3.3 service provider shall be granted the non-exclusive, non-transferable, non-assignable, right to process weather data to an extent necessary to include them into its own meteorological products and/or services. Furthermore service providers are entitled to disseminate these weather data to be used with its products and/or services if and when, weather data embedded/processed within his products and/or services are not identifiable as such and may also not be back engineered to their original form. Transfer of weather data, whether with or without remuneration as well as a publicly accessible display of weather data in their crude form shall not be permitted.

- 3.5 „Service Provider entitled to dissemination“ (level 4): subject to payment of the agreed remuneration and in excess to the rights already contained in para 3.4 “service provider entitled to dissemination“ shall be granted the non-exclusive, non-transferable, non-assignable right to disseminate and transfer as such the weather data provided in crude or refined form, for or without consideration to entities known to it (e.g. individual end users, media).

- 3.6 The remuneration agreed upon the parties takes the level of use into account.

**4 Form of data provision, data quality, data availability and data transfer**

- 4.1 If the weather data shall be provided in a form decipherable to „Standard Office products“, they shall be provided to customer via an internet address separately named. To this end customer shall upon acceptance of the offer respectively signature of the respective contract be provided with a customer login and a password via mail, fax or email.

- 4.2 ACG shall provide the weather data to customer at the agreed data interface. Basically the respective data interface shall be defined in the offer respectively contract. In the event no data interface is defined the

node, producing data for customer shall be judged to be the agreed data interface.

- 4.3 Weather data once provided at the data interface as per 4.2 shall be deemed provided and transferred. Takeover of weather data at the data interface as well as their further transmission are solely at customer's risk and cost. After takeover at the data interface troubleshooting and bug fixing has to be done by customer.
- 4.4 Weather data are accessible to customer on 24/7 basis, save necessary maintenance and/or repair times and insofar the operational status of national and international communication devices, lines and the availability of access points allow for it. Force majeure, strikes and similar circumstances, impeding ACG's timely delivery, postpone the point of time of delivery by at least the duration of the hindrance and an adequate restart time. Weather data generated within the time of hindrance shall not be delivered.

## 5 Duties of customer

- 5.1 Customer is bound to solely use the weather data in line with the contract, these general terms of trade, all acts/law applicable and other legal regulations and to comply including without limitation with all provisions dealing with intellectual property, telecommunication, services linked thereto, media as well as (administrative) provisions of a penal character.
- 5.2 Customer shall, including without limitation:
- Secure that it will make accessible weather data only insofar as it is in line with the agreed. Customer shall restrict these third parties in use and limit their use to only a part of its own rights. All rights to use shall be non-transferable, non-assignable. Only level 3 and 4 rights shall be partially subject to granting of sublicenses. In the event third parties, sublicensed by customer, will infringe ACG's rights, customer shall hold ACG save and harmless.
  - In the event of level 4 rights (=„Service Provider entitled to dissemination“) customer has to furnish ACG each three months with a list of its sub-customers which it served with weather data. The list has to contain the level of use applicable to the sub-customer and the duration of the respective contract.
  - In the event of level 4 rights (=„Service Provider entitled to dissemination“) ACG is entitled to access customers bookkeeping itself or by experts in order to assess the correctness of reporting and adherence to contractual provisions. ACG is entitled to copies thereof at cost.
  - Keep its access data confidential and reimburse ACG for all and any damage caused by unauthorized dissemination of its access data;
  - Notify ACG immediately of any reasonable suspicion of abuse of its access data;
  - Access ACG's services only with devices being in line with the applicable legal provisions;
  - Refrain from any abuse of weather data and prevent any abuse of its access data.

Customer shall hold harmless ACG against all and any infringements of its duties and obligations as contained herein. In the event customer infringes provisions contained herein or other applicable acts, ACG is entitled to terminate the contract in question for cause and to suspend its services on the spot.

## 6 Remuneration

- 6.1 The amount of remuneration is computed taking into consideration the contracted category of use respectively the use category contained in the respective offer (see 3.2 until and including 3.5) and is subject to the current pricelist as contained in the offer/contract in question. Prices contained therein are exclusive VAT.
- 6.2 In the event the amount of services rendered regularly by ACG to a large group of users may not be determined or only at disproportional cost, the remuneration due may be calculated as a flat rate fee. To compute the flat rate the single fees shall be multiplied by the realistic estimated frequency of use.
- 6.3 In the event of level 4 rights (see 3.5) the Service Provider entitled to dissemination shall pay in addition to the basic fee remuneration in relation to weather data disseminated to third parties, i.e. 75 % of the amount, which would be invoiced from a direct level 1, 2 or 3 customer out of the current price list.
- 6.4 As a matter of principle weather data provided by customer to its affiliates and the use by them would lead to an annual amount due on the side of each affiliate. In the event of provision of weather data to a maximum of 20 of its affiliates, customer shall be charged with 5% of the price for the level of use applicable in each single case. By application of these general terms of trade it is unanimously stated that an affiliate consists in an enterprise that has to be consolidated in accordance with the applicable legal regulations; in the event customer not underlying these regulations, affiliates shall be enterprises on which customer is entitled to exercise direct or indirect a dominant influence or *vice versa* or both being subjected to the dominant influence of the same entity, either out of ownership, financial contribution to their social capital or other regulations applicable. A dominant influence shall be assumed, if and when an entity is in direct or indirect possession of the majority in the stake or the voting rights or is entitled to determine more than half of the members of the board of directors of another entity. The duty to pay remuneration as per 6.3 remains unchanged.
- 6.5 In the event customer exceeds the agreed level of use, it shall pay as liquidated damages a remuneration amounting to 200 % of the price foreseen in the current price list for the level of use which it uses. ACG is entitled to immediate and subsequent charging of said amount.
- 6.6 Customer wishing a change in its level of use (e.g. it intends to use weather data for another aim, already not contained in its level of use), is bound to notify ACG in writing of the intended change in its level of use. Starting with the point in time, when ACG consents in writing to the change in the level of use, customer is entitled to use weather data in the framework of the newly agreed level of use. ACG's right as per 8.2 remains unchanged.
- 6.7 Remuneration has to be paid in accordance with the offer/contract in question. In the event no provision is contained therein, the yearly remuneration shall be due and payable in advance on a quarterly basis with a grace period of 14 calendar days. The variable additional remuneration as per 6.3 shall be due and payable on a yearly basis on 31.1.; three weeks in advance at the latest customer shall provide ACG with the relevant compiled business data in tabular form (net amount per dissemination, duration of the sub-contract in question, net prices combined) and render a method of evaluation to ACG. Bank charges shall be borne by customer. . Payments of Customer shall be deemed effected when credited to ACG's bank account.

Account coordinates:

BAWAG P.S.K. AG

IBAN: AT85 6000 0000 9000 5503

BIC (SWIFT): BAWAATWW

6.8 In the event customer defaulting in payment ACG shall be entitled – at its sole discretion – to either reimbursement of damage incurred or to default interest as provided by law, but not less than 12 % p.a. Customer defaulting shall reimburse ACG a reminder fee, insofar they are necessary to enforce ACG's rights.

6.9 It is herewith stated that remuneration shall be subjected to the application of a stable value clause in line with the consumer price index 2010 (VPI 2010) or another index replacing it. Basis for computation = 100 % shall be the value promulgated for the month of signature of contract. Remuneration shall be changed proportionally to the change of the agreed index in the reference period. Reference period shall be October of the precedent year until October of the subsequent year. Adjustments are to be done once a year, i.e. per January 1<sup>st</sup>, variations in both directions up to and including five percentage points shall not be taken into account. Beyond these limits of variation the full percentage of variation shall be taken into account. The remuneration then computed shall form the basis for computation of future variations. Customer shall be notified of the adjusted remuneration in time. The omission to do so shall not be judged a waiver to ACG's right/obligations, save the claims to default interest. For the year, when the contract was concluded/the offer was accepted no application of the stable value clause shall take place.

## 7 Warranty and liability

7.1 All weather data are generated and actualized endeavoring highest diligence.

7.2 ACG warrants the measured and/or observed data to be accurate within the limitations agreed, if any. In the event measured and/or observed data are not accurate, ACG shall deliver the correct data immediately upon being invited thereto. Betterment shall have priority to other remedies.

7.3 ACG expressly shall warrant/be responsible/liable for forecast values as well as completeness of weather data. Furthermore ACG shall not warrant for fitness for whatever purpose of weather data. Including without limitation ACG shall not warrant nor be liable for compatibility/usability of weather data with certain software that may be necessary.

7.4 Claims for damages, if any, shall be – insofar legal regulations or a mandatory character do provide for the contrary - restricted to deliberate acts as well as gross negligence. ACG shall not be liable for loss of profit as well as consequential damages. As far as permissible by law ACG's liability shall be restricted to the yearly amount of remuneration agreed with customer and already paid for the provision of weather data. The present waiver of liability shall comprise including without limitation liability for slight negligence, business interruptions, loss of data/information, and breakdown of EDP systems as well as damages to software. Including without limiting the foregoing each and any liability for loss of profit, economic and consequential losses, incurred out of the use, storage and proliferation of weather data shall be excluded.

## 8 Duration and Termination, expiry of right to use

8.1 A contract by and between ACG and customer concerning the provision of weather data shall enter into effect on the first of the month subsequent to the

month in which the contract was signed and shall be concluded primarily for a duration of one year. Upon lapse of this duration it shall automatically be renewed for an indefinite period of time. Both parties are entitled to terminate the contract by registered mail with three months written notice as of the end of the calendar month. Computation of cancellation period shall start at the date of posting.

8.2 ACG may deprive customer from its rights out of the contract without previous notice if and when customer multiple or grossly breaches the contract and/or these general terms of trade or is in default despite having been given appropriate grace periods. This deprivation shall be headed by a written notice of default and be on pain of penalties. In this event customer shall not be entitled to reimbursement of the remuneration already paid. ACG's claims to damages exceeding aforementioned sum shall remain unchanged.

8.3 ACG is entitled to terminate the contract for cause with immediate effect and without any recourse to a deadline, if and when, a winding-up procedure is instituted against customer or an application therefore has been denied and/or rejected because of insufficient assets.

8.4 If the contrary has not been expressly agreed, customer's rights to use of data shall cease to exist upon termination of the contract, all data stored have to be deleted. Customer's obligations out of rights to use and hint to the origin of data as well as provisions on breach of contract out of these general terms of trade as well as out of the laws governing intellectual property shall survive the termination of the contract.

## 9 Data protection, change of address

9.1 Customer expressly consents that its person related data may be used, stored and processed electronically by ACG. Furthermore Customer expressly consents to be provided with emails, containing weather data related or other information in connection therewith as well as other information relevant to the contractual relationship between ACG and Customer.

9.2 Within the existing contractual relationship Customer shall inform ACG without any delay of any changes in its name, identification, as well as its business/physical address (change of its principal place of business), its legal form, commercial registry number or other data relevant for the execution and fulfilment of the Contract (phone number, e-Mail address). Declarations on payment instruments are not sufficient to comply with the duty described herein. In the event of Customer not doing so, declarations shall be deemed delivered if sent to the last known address of Customer.

## 10 Miscellaneous

10.1 In fulfillment of its contractual duties ACG is entitled to use the services of third parties or assign the whole contract, without Customer's consent to an at least 50% affiliate or a commercial agent.

10.2 Customer shall not be entitled to off-set with any claims whatsoever if not due, of same nature and expressly acknowledged or determined by court.

10.3 Partial invalidity of a single or several clauses of the present General terms of trade and/or the agreement will not render invalid the remaining clauses. The invalid clause will be mutually replaced by a valid clause which corresponds as much as possible to the intent of the parties.

10.4 Customer will be notified of any changes, amendments and/or alterations to these Terms of Trade either in writing, or via email or online upon its next login. Notified changes, amendments and/or alterations to these terms of trade shall form part of the Contract, if Cus-

---

tomor does not object expressly and in writing within 14 days.

- 10.5 Changes, amendments and/or alterations of the Contract as well as the terms of trade require the written form. The requirement to the written form may be altered itself in writing only. E-Mail and fax are deemed compliant with the requirement afore stated. No parole agreements exist or if any they shall be deemed null and void upon signature of the Contract or if signature does not take place upon begin of data provision.
- 10.6 The Contract concluded by and between ACG and Customer shall be solely governed and construed in accordance with the Austrian material law save the collision norms and the UN Convention on the international sale of goods.
- 10.7 Any dispute arising out of or relating to this contract shall be finally settled through the commercial court in Vienna. Furthermore ACG shall be entitled to file an action at the court of jurisdiction competent in the state of Customer, too.
- 10.8 Documents forwarded to the addresses of the parties as contained in the respective contract/order shall be deemed delivered, even if the recipient named denies acceptance or the address has been cancelled or the recipient is not ready to receive. In the event a party informing the other of the change of its address in writing, the new address shall be the valid address.
- 10.9 Current version of these terms of trade may be downloaded via internet from <http://www.austrocontrol.at>.