

# ECG Erdgas-Consult GmbH's Standard Business Terms for Goods, Services, and Software Licenses



ECG Erdgas-Consult

## 1. Area of Applicability

These Standard Business Terms apply to all contractual relationships and pre-contract negotiations with our customers, regardless of the type and scope of service within the bounds of current or future business relations.

## 2. Exclusivity

Our Standard Business Terms shall apply exclusively.

Contrary Standard Business Terms of customers or third parties shall apply only if ECG Erdgas-Consult GmbH (hereinafter referred to as "ECG") gives its express, written consent to their application.

If you do not agree to this, promptly inform ECG in writing. In this case, ECG reserves the right to withdraw its offer, and no claims of any kind may be asserted against ECG.

Any reference by customers to their own Standard Business Terms is hereby expressly rejected.

## 3. Contract Formation and Written Form

In general, ECG enters into a contractual obligation only if the type and scope of the performance and counter-performance have been established by both parties in writing. Later amendments and supplements do not take effect until confirmed in writing. The same applies to all declarations of intent, particularly objections, warnings, and complaints about defects within the bounds of contractual relationships. The right to collect liquidated damages must be reserved by both parties in writing. This clause can be repealed only by express written agreement.

## 4. Licenses and Scope of Use of the Software

In its capacity as rights holder, ECG transfers the non-transferable, non-exclusive right to use the software and documentation specified in the order and/or the invoice for an indefinite period of time to the customer. The customer acquires the right to use the software within a local network or via a service provider (external server) to the extent the customer has paid the license fee. The basis for this is the number of licenses and/or any special agreements on the scope of the right of use (license agreements) listed on the particular invoice.

The customer obtains no further proprietary rights to the software, particularly with respect to any type of marketing or exploitation to third parties, such as leasing, lending, or sale. The same applies to duplication, use, modification or reproduction of the content of the software that goes beyond the scope of the intended use and any form of revision or other alteration of the software and the related documentation that is not expressly authorized. The customer may not decompile, disassemble, or otherwise convert the software to readable form beyond what is permitted by law.

The license shall automatically become invalid if you violate any provision of this Agreement, and there shall be no need for notice of termination. If the Agreement ends, you must destroy the software and all copies thereof. You can end the license agreement at any time by destroying the software and all copies thereof.

## 5. Copyrights

The software is protected by copyright. The copyright encompasses, in particular, the program code, the documentation, the appearance, the structure and organization of the program files, the program names, logos, and other display formats in the software.

ECG shall remain the owner of all copyright rights and rights of use with respect to the software provided to the customer, including the related documentation. Any modifications and expansions of the program code made at the request and expense of the customer become the property of ECG. The right to use the program improvements is hereby assigned to ECG, which hereby accepts the assignment.

## 6. Third-Party Intellectual Property Rights

The customer shall promptly notify ECG of all violations of intellectual property rights asserted against it in connection with the use of the software due to infringement of copyrights, patents, and other intellectual property rights.

The customer shall not acknowledge any such claims without the consent of ECG. Rather, the customer shall permit ECG, at its request, to handle all necessary negotiations and proceedings in this regard. The customer shall give ECG the necessary support in this. If claims have been made or are anticipated based on violations of copyrights, patent rights, or other intellectual property rights, ECG can modify or replace the software at its own expense to prevent a violation. Payment for the software system delivered by ECG may not be reduced on this account.

If use of the software or parts thereof is prohibited by a judicial decision or if a complaint for violation of intellectual property rights is threatened, in the opinion of ECG, ECG shall be entitled, at its election and expense,

- to modify the software so it no longer violates intellectual property rights;
- to obtain the right for the customer to continue using the software;
- to replace the software with software that does not violate intellectual property rights and that either meets the customer's requirements or is the equivalent of the software that was replaced.

## 7. Acceptance

To the extent the performance to be rendered by ECG relates to work, ECG shall give the customer written notice when the work is completed and request the customer to accept the work.

If the work is acceptable, the customer shall promptly give ECG written notice of its acceptance no later than 14 days after ECG's notice.

If the customer fails to accept the work within this period, it shall, nevertheless, be deemed to have been accepted. Receipt of the letter by the customer shall be controlling with respect to the start of the acceptance period. If the customer pays for the delivery software without complaint after placing it in operation, this shall be the equivalent of acceptance of the software. The work/software shall also be deemed to have been accepted if the customer uses it in production.

Acceptance cannot be denied due to immaterial defects.

## 8. Warranty

For a period of 12 months after transfer of risk, ECG guarantees that the functioning of the software will generally be of usual quality for works and items of this type and will be what the customer can expect of works or items of this type. If the customer is a "consumer" within the meaning of the Civil Code, the warranty period shall be two years.

ECG shall be liable to provide a certain quality only if this was expressly agreed upon in writing (contractually agreed upon quality).

ECG points out that it is impossible to create computer software that is completely free of errors under the current state of technology.

If a software error appears, the customer must promptly report it to ECG in writing. The written complaint about the defect must describe the defect and its manifestation precisely, so it is possible to examine the defect (e.g. submission of error messages) and to exclude any operating error (e.g. information about procedures).

If the complaint about the defect is justified, the customer shall give ECG a reasonable period of time to eliminate the defect. ECG shall be entitled to make two attempts to eliminate the defect or a directly related defect within the period set by the customer. After the second unsuccessful attempt to eliminate the defect, the customer can rescind the Agreement or reduce the license fee/compensation owed. The right of rescission or reduction in fees can be exercised after the first unsuccessful attempt if a second attempt within the time period is not reasonable to the customer. If ECG refuses to eliminate the defect under the aforementioned conditions, the customer shall have the right to rescind the Agreement or reduce the fee immediately.

Rescission for an insubstantial defect is excluded.

If elimination of the defect is physically impossible or unreasonable on economic grounds, ECG shall be entitled to install a workaround solution if this provides a suitable resolution for the problem.

Unless expressly agreed, ECG makes no warranty that the software will meet the customer's special requirements or will be compatible with the customer's other programs or existing hardware.

If the customer sues ECG under warranty, and it turns out there was no defect or the asserted defect was not covered under ECG's warranty, the customer shall compensate ECG for the resulting expense to the extent the customer's lawsuit against ECG was grossly negligent or willful.

## 9. Liability and the Statute of Limitations

ECG's contractual and statutory liability shall be limited to intentional acts and omissions and gross negligence, and in the case of simple negligence, it shall be limited to the violation of cardinal contract duties. The above limitation on liability shall also apply in favor of employees, representatives, and agents of ECG.

In the case of slight negligence, ECG's liability shall be limited to compensation of average typical, foreseeable, direct damages. In the case of gross negligence, it shall be limited to typical, foreseeable damages. Sentence 2 of this paragraph shall apply *mutatis mutandis*.

The restrictions and limitations on liability listed in Paragraphs 1 and 2 shall not apply to lack of a guaranteed quality, bad faith, or harm to life, limb, and/or health. Liability under mandatory legal provisions that are not subject to contrary agreements by the parties, such as the Product Liability Act and the Federal Data Protection Act, shall not be affected.

If a claim is brought against ECG, any joint responsibility on the part of the customer shall be reasonably taken into account, particularly if its error report was inadequate or it did not adequately back up data. Data back-up will be considered inadequate if the customer neglected to take precautions against outside influences, such as computer viruses and other phenomena that can endanger individual data or entire databases by taking reasonable security measures conforming to the state of technology.

The statute of limitations for non-cardinal contract violations is limited to two years.

## 10. Confidentiality, Data Protection

ECG and the customer mutually agree to keep all the other party's business and trade secrets confidential and not to disclose them to third parties or exploit them in any way. The other party may use the documents, drawings, and other information it receives through this business relationship only for contractual purposes.

## 11. Choice of Law, Place of Performance, and Jurisdiction

Our entire business relationships with our customers shall be subject to the laws of the Federal Republic of Germany exclusively, excluding the provisions of international private law. Application of the UN Convention on the International Sale of Goods (UNCITRAL) is expressly excluded.

The place of performance for goods and services shall be the place contractually agreed upon as such. In doubtful cases, it shall be Leipzig. The place of performance for payments shall be the location of the payment agent indicated on the invoice.

Jurisdiction for both parties shall lie with the competent courts in Leipzig. However, ECG shall be entitled, at its election, to assert claims before courts that have jurisdiction over the customer.

If the ECG's contract partner is not a registered merchant, the provisions of law shall apply.

## 12. Severability

If individual provisions of these contractual terms and conditions or of any other individual agreements entered into should be invalid, in whole or in part, this shall not affect the validity of the remaining provisions. The invalid provision shall be replaced by another that is valid and comes closest to the economic purpose of the invalid provision.

## Exclusivity of the German Version of these Standard Business Terms

Only the German version of these ECG Erdgas-Consult GmbH Standard Business Terms for Goods, Services, and Software Licenses shall be legally binding. Any versions of these ECG Erdgas-Consult GmbH Standard Business Terms for Goods, Services, and Software Licenses not in the German language shall be solely for informational purposes. Therefore, in the event of any inconsistency between the German text and the text in some other language, the German text shall be controlling.