

# General Terms and Conditions of UBIMET GmbH

## § 1

### Applicability of Terms and Conditions

1. These Terms and Conditions shall apply to all business relationships between UBIMET and its clients regarding weather services or to the sale and delivery of meteorological measurement readings and forecast data.
2. Alternative, contrary, or supplementary terms and conditions of the client shall only become an integral part of an agreement to the extent that UBIMET expressly consents to their application in writing. The consent requirement shall apply in all cases, e.g. even if UBIMET provides services in the knowledge of the client's terms and conditions without any reservation and/or without objection.
3. Individual agreements entered into with the client in individual cases (including side agreements, supplements, and amendments) shall take precedence over these Terms and Conditions in all cases. Such individual agreements must be based on a written agreement or a written confirmation by UBIMET

## § 2

### Services by UBIMET

1. The specified scope of services is set forth in the order from/offer.
2. UBIMET itself is wholly reliant on data transfers from third parties to provide its services. Therefore, availability of the data as a prerequisite for providing services to others is subject to the condition (which does not constitute an event of default) that UBIMET itself receives the data from third parties.
3. UBIMET shall provide a contact person in case of technical questions. UBIMET shall name this technical contact person to the client directly after the signing of this Agreement and shall promptly inform the client if the technical contact person is changed. Client shall also name a technical contact person directly after the signing of this Agreement. and promptly notify UBIMET of any changes.
4. UBIMET shall have the right to modify or adapt the services if this is necessary or expedient to reflect technical progress and it does not restrict the services for the client provided by UBIMET.

## § 3

### Fees

1. The fees as set forth in order from/offer apply. UBIMET's claims shall be due and payable in full without any deductions within 14 days of issuing the invoice. The statutory applicable VAT tax and any other applicable taxes and levies must be added to all fees. In case of default late payment fees apply in the amount of 12% p.a and in addition reminder and collection charges apply.
2. In case payment of the fees in installments is agreed, the entire fee amount shall become due any payable in case of default of only one installment.
3. The agreed fees are subject to indexing based on the 2010 Consumer Price Index (CPI) published by Statistics Austria CPI or an index replacing the CPI. The index number published in the month where this Agreement came into force shall serve as base value

## § 4

### Right of Use

1. UBIMET grants the client a non-exclusive and non-transferable, temporally limited to the term of this Agreement, geographically limited to the contract territory and substantively limited to the purpose of this Agreement, right to use the provided services (Data). Any additional use beyond these limitations, particularly the transfer to third parties of the rights of use that have been granted, and any change, adaptation and/or publication or disclosure of the Data, in whole or in part without the written consent of UBIMET are not permitted.
2. If the client violates the rights of use granted to him, UBIMET shall have the right to terminate this Agreement for cause. In addition, UBIMET shall be entitled to seek liquidated damages of up to a local currency equivalent of EUR 10,000 (in words: Euro ten thousand) for each individual violation under this Agreement. The client has the right to prove – and shall bear the burden of proof – that exceeding the limits of the rights of use did not cause any damages or only caused lesser damages. UBIMET reserves the right to take judicial and non-judicial action if actual damages are higher, irrespective of its demand for liquidated damages and, if appropriate, in addition to such demand.

## § 5 Liability and Warranty

1. This Agreement does not establish rights of any kind in favor of end-customers of the client, or third parties. If such persons raise claims against UBIMET in connection with the services subject of this Agreement, on whatever legal ground, client shall indemnify UBIMET and hold it harmless against such claims
2. UBIMET shall provide all services in accordance with the recognized rules of meteorological science and technology. Due to the numerous factors that influence the weather, actual weather conditions cannot be reliably forecast in all cases. Likewise, it is not always possible to fully understand weather conditions in retrospect. Rather, the services of UBIMET are meteorological forecasts based on meteorological experience with certain probabilities. Deviations from actual weather conditions cannot be avoided.
3. Therefore, UBIMET assumes no liability of any kind in connection with any failure of the meteorological data to match the weather conditions actually occurring towards the client or affiliated third parties.
4. UBIMET explicitly advice the provided information is not deemed as an official severe weather warning. In case client requires or is obligated to receive an official severe weather warning, the service provided by UBIMET to the client may be not meet this requirement.
5. If and to the extent that UBIMET must rely on data from third parties to provide its services, UBIMET shall check the plausibility of this third party data in accordance with the recognized rules of meteorological science and technology. UBIMET assumes no further liability and/or makes no further warranty of any kind with respect to this data. The same applies to the (timely) availability of the third party data itself, as a prerequisite for providing information to others. With respect to the selection of the third party data supplier, UBIMET shall be responsible solely for the selection of the company in accordance with Section 5.8.
6. UBIMET makes no warranty and/or assumes no liability of any kind for any failures, interruptions, omissions, faulty data transfers, or other disruptions or impairments of the channels of communication caused by technical difficulties (including necessary maintenance time) if and to the extent that this is not the responsibility of UBIMET under Section 5.8. With respect to the company hired for communications and data transfer purposes, UBIMET shall be responsible solely for the selection of the company in accordance with Section 5.8.
7. For the sale and/or delivery of meteorological measurement readings and forecast data § 377 of the Austrian Commercial Code, as amended, shall apply. The services must be investigated by the client after the sale/delivery has been made. Claims with respect to any defects that have been found or that could have easily been found with the proper attention must be made to UBIMET in writing promptly after the services have been provided. Otherwise Section 5.10 shall apply.
8. UBIMET shall be liable for losses only if wrongful intent or gross negligence are proven, and such losses shall be limited to typical, foreseeable contract damages due to violations of material obligations. Apart from and/or outside of this, client shall have no claims for damages, of whatever legal nature, against UBIMET unless and to the extent that mandatory law provides otherwise.
9. If and to the extent legally feasible, all claims and causes for actions against UBIMET for all losses culpably caused during the term of this Agreement shall – cumulatively – be limited (i) in case of flat fee agreements to the half of the amount of the agreed fees and (ii) in case of agreements with recurring charges limited to the amount actually paid by the client for the services provided by UBIMET during the six months prior to the occurrence of the first claim or cause of action with a local currency equivalent of Euro 20,000 (in words: Euro twenty thousand) whichever is less. If and to the extent legally feasible, there shall be no compensation for (direct or indirect) consequential damages, loss of data, savings not realized, lost interest and expenditures made in vain and lost profit.
10. Client shall give UBIMET prompt notice of any disruption or defect of the provided services in writing or by e-mail, no later than three days upon its awareness of the disruption or defect, or otherwise lose its right to raise warranty or damage claims.
11. If the client asserts timely claims against UBIMET for deficient performance (Para. 10), client's exclusive remedy shall be to reduce the portion of the fee attributable to the deficient performance. Other warranty claims, including but not limited to rescission (*Wandlung*) shall be excluded. The statute of limitations for claims for deficient performance shall be six months.
12. The rescission of the agreement based on error (*Irrtum*) and § 934 of the Austrian Civil Code (*laesio enormis*) shall be excluded.

## § 6 Duration of the Agreement

1. The term of this Agreement is stated in the order form/offer.
2. Unless not agreed otherwise in the order form/offer, this Agreement shall renew for additional 12 months unless one of the Parties gives the other Party written notice of termination at least 6 months before the expiration of the Agreement.
3. Either Party shall have the right to terminate the Agreement early if and to the extent there is cause that makes further collaboration seem unreasonable. There shall be cause, in particular, in the following cases:
  - if client violates Section 4 of these Terms and Conditions despite a warning;
  - if client does not meet its payment obligations despite being provided a 14-day grace period;

Irrespective of the examples of good cause set forth in Section 6.3, the Parties agree that, even in cases that constitute "good cause" within the meaning of Section 6.3, the relevant contracting Party shall be granted a grace period of 10 (ten) business days. The period shall begin to run when one contracting Party gives the other contracting Party written notice that it has good cause to terminate the Agreement. The foregoing applies exclusively to cause that is of such a legal nature that it can be rectified. The foregoing shall not affect any claims for compensatory damages.

## **§ 7 Data Protection**

1. **The personal data provided by the client in the framework of the contractual relationship, particularly the contact data (i.e. the telephone number, fax number and e-mail address), are processed by UBIMET for the purposes of provision and performance of the contractual services. Subject to revocation, the client hereby expressly agrees to receive (fax, e-mail and SMS) messages at any time with information from the contractual service, even if these messages contain advertisements from UBIMET and/or third parties that may not be companies in related industries, in addition to the information from the contractual service.**
2. **Further the client expressly consents to the use of the personal data he provides, particularly the contact information, by UBIMET for UBIMET's advertising and marketing purposes and for the advertising and marketing purposes of UBIMET's advertising partners. The client grants UBIMET express consent to transmit his personal data to its existing and future advertising partners for their advertising and marketing purposes. In particular, by providing his telephone number, fax number and/or e-mail address, the client expressly agrees to receive telephone calls, fax messages, and/or electronic mail (e-mail, SMS messages etc.) from UBIMET and its advertising partners for advertising and marketing purposes. This consent shall be valid during the agreed-upon term of this Agreement and can be revoked at any time. Any revocation and any change in personal data shall be e-mailed to [info@ubimet.com](mailto:info@ubimet.com).**
3. UBIMET shall comply with mandatory data protection law, as amended, when directly applicable to UBIMET

## **§ 8 Place of Performance, Jurisdiction, Applicable Law**

1. The Terms and Conditions are subject to Austrian law excluding its conflict-of-law rules and the provisions of the UN Convention on Contracts for the International Sale of Good (CISG).
2. The place of performance shall be Vienna, and all disputes, differences of opinion and claims arising under these Terms and Conditions or relating to these Terms and Conditions, their violation, dissolution or invalidity shall exclusively be filed with a court with subject matter jurisdiction at the place where UBIMET has its registered office.

## **§ 9 Final Provisions**

1. The entire content of the order form/offer are confidential for both contracting Parties. The Parties shall procure that its employees/contractors, advisors and/or other third parties acting for the respective Party will be bound this confidentiality obligation.
2. Client shall have no right of set-off or retention right unless its counterclaims have been found to be valid by a court of law (in a final and non-appealable decision) or are uncontested or have been acknowledged by UBIMET.
3. Client shall not have the right to assign any claims arising out of this Agreement he has towards UBIMET. UBIMET shall have the right to assign this Agreement and all rights and obligations that may be derived from it to a third party. Client hereby gives its irrevocable consent to this assignment in advance.
4. UBIMET is entitled to make reference to the Client and its logo, whether namely, in writing or electronically, unless expressly revoked by the Client in writing.
5. This Agreement contains the entire agreement between the Parties about its subject matter and any concluded previous understanding, agreement, representation or warranty, verbal or written, relating to that subject matter is replaced by this Agreement and has no further effect.
6. Amendments or supplements to this Agreement must be in writing to be valid. This also applies to any deviation from the written form hereby agreed-upon, so that there can be no presumption of tacit deviation from this requirement for validity.
7. If individual provisions of this Agreement or Terms and Conditions are or become invalid or unenforceable or the Terms and Conditions are deemed as incomplete, the other provisions of these Terms and Conditions shall be unaffected and shall remain valid and enforceable. Invalid or unenforceable provisions shall be interpreted and amended, by mutual consent, with valid and enforceable provisions that come closest to the intended economic outcome of the Parties.

Version: February 2016