

General Terms and Conditions

General conditions for the fulfillment of services by Emporis GmbH in Frankfurt, Germany, hereafter referred to as "Emporis" or "the Provider."

1 Scope

The Provider undertakes the procurement, negotiation, and placement of offers made in connection with the Emporis internet web pages found on the URL www.emporis.com. Contracts, contract changes, offers, and verbal agreements are not binding until confirmed in writing by the Provider.

2 Online Access

Online Access provides a password-protected key to the Provider's database. The following will apply:

2.1 Data Quantities

Data quantities mentioned in brochures or other sales literature, in offers, and in order confirmations can vary from quantities actually delivered due to updates made to the database. Claims made on the basis of changes to data quantities cannot be validated.

2.2 Delivery

The Customer's right of access will be confirmed with a user ID, which he will secure with a secret password and/or IP-check. The Customer takes full responsibility for the safe keeping of his right of access as well as for any misuse thereof. Access to the Provider's database is assured in principle 24 hours a day. However, the Provider makes no guarantee of this availability. In particular, slow performance or temporary "down time" due to maintenance work or high network demand does not entitle the Customer to guarantee or liability claims.

2.3 Use

Access to data or services provided by Emporis is exclusively for the internal use of the Customer. Sharing of the product in its original form to third parties is forbidden. The processing of delivered data is only allowed in the context of the Customer's normal business practices. Third parties are people [legal entities] not directly involved with the Customer's business. Where the product consists of data, this may be used at one or more work places depending on the contractual agreement and the number of acquired licenses.

2.4 Subscription

The Customer does not acquire the right of ownership of data or any part thereof, which remain the property of the Provider and/or his sources [associates]. The subscription period begins with delivery of the Access Data and lasts for one year unless otherwise agreed upon. The subscription will be extended automatically for one year unless one of the parties gives written notice to terminate at the latest 90 days before the subscription is due to end. During the subscription period the Provider will make available all updates to the product, or portions thereof, to all customers equally. Updates will be provided through exchange [of relevant materials]. The Provider retains the right to from time to time make changes to, shut down at any time, or repossess the product or any portion thereof. In case of repossession, the Customer will be entitled to appropriate credit or refund, or by the substitution for higher-quality product according to the judgment of the Provider.

3 Online Advertising

Online advertising includes the products Emporis Link (hotlink connections on a building or company page), Emporis Spotlight (advertising for individually designed graphic placements on many pages) and Emporis Global (advertising of the company logo on many pages). The following will apply:

3.1 Material

The Customer will make certain that all information, data, and other material will be delivered on time, complete, and error-free according to the contractual agreement. All graphic material must be in GIF or JPEG format. The advertising graphic(s) have to have the correct dimension as outlined in the contract. Target addresses of links (URL's when intended for the internet) must be sent to the Provider in written form. All materials must be in the hands of Emporis no later than three working days before advertisements are scheduled to go online. Materials can be delivered as E-mail attachments sent to sales@emporis.com or by mail to

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Germany

In cases where the Provider will create the graphic presentation, all submissions must be made 14 days at the latest before the advertisement is scheduled to go online. The Provider takes no responsibility for submitted materials and is not required to store or return any materials to the Customer. Unless otherwise agreed upon, all rights for graphic designs and animations created by the Provider will remain with the Provider.

3.2 Release

The Provider retains the right, though is not required, to make changes to submitted materials and to undertake changes or corrections – especially in regard to measurements – to the extent required or advisable for optimal presentation. The Customer is required to proofread the advertisement immediately after it goes online and to report any errors during the first week online. Should error(s) be reported, The Customer will be informed that the advertisement has been taken offline by means of a test page. The assessment of the page as well as any objections to possible mistakes must be made by the next workday following receipt of notification. Following this, the Banner advertisement will be considered accepted, and the Customer will assume any costs associated with requested changes. The Provider makes no promises regarding the placement of advertisements or the sequence of their being put online. The Provider retains the right to reject advertisements for editorial or other reasons.

3.3 Legal Responsibility

Responsibility for the content of the advertising material and the graphic layout is assumed exclusively by the Customer. The Customer guarantees that the rights of third parties will not be infringed upon by placing the advertisement online. The Customer indemnifies the Provider of all claims by third parties against the infringement of applicable rules and regulations. The Customer guarantees that the content of the advertisement does not violate applicable law, legal or official prohibitions, or commonly accepted public standards. Should the Customer be in violation of any applicable law or prohibition, or, in the judgment of the Provider, to be in violation of commonly accepted public standards, then the Provider retains the right to revoke the offer for advertising space. A warning will not be required. The Provider will inform the Customer of his decision immediately. The Customer will be responsible for rendering the contractually agreed payment unless he can prove that the Provider had no just cause to revoke the offer. Further claims for reimbursement or compensation for damages by the Customer are excluded.

4 Image Licensing

Photos offered by the Provider are own photographs or those of Emporis' suppliers. No photographs or works of third parties are available for licensing. In addition, the following will apply:

4.1 Use

Prices cover only the use by the Customer [named in the contract] for an unspecified length of time. Any further use of the imagery by a third party [of a name other than the Customer's] will be subject to further charges. All usage of our photographic material, including online publication or creation of a CD-ROM, is subject to a fee. This includes use of photos as a basis for drawings, caricatures, reworked photos, and presentations by The Customer, as well as the use of photographic details that can be used in new photographic compositions by use of montage, photocomposing, electronic editing, or other techniques.

4.2 Delivery of Original Photography

In cases where photo negatives are submitted, the Customer, not the Provider or his contributors, will be responsible for their delivery in undamaged condition, even when the Customer passes on the photos to third parties. All risk for delivery of photographic materials will be carried by the Customer. The Customer has to return negatives within four weeks in undamaged condition.

4.3 Preparation of Photographic Materials for Delivery

The Customer will receive a licensing code by E-mail or Telefax for downloading photographic material. This licensing code must be entered on the Emporis internet page: <http://download.emporis.com/> In exceptional cases photographic material will be sent directly by E-mail.

4.4 Copyright

The name of the photographer must be recognized either directly on the photo or in an index when using photographs. This will be done in the following format:

©photographer's name/Emporis

Should a photographer not be named, then the Provider has the right to claim damages from the Customer in an amount double the original value of the order.

5 Licensing of Data

Data offered by the Provider are own data and/or those of Emporis' suppliers. No data or works of third parties are available for licensing. In addition, the following will apply:

5.1 Use

The supplied data are only allowed for internal use at one location of the customer. Resale or delivery free of charge is prohibited unless otherwise agreed upon in written form. Allowed is solely the distribution of content by the Customer gathered through analyzing the data provided by the Provider, either in printed or electronic form.

5.2 Delivery of Data Material

The data are only allowed to be used by the defined contract purpose and by the defined number of licensees.

5.3 Multiplication

Supplied data and software are only allowed to be backed up for own security reasons.

5.4 Copyright

The manipulation and/or modification of data or parts of it as well as the inclusion/mixture in/with other services/products is not allowed by the Customer.

5.5 Purpose of Use

The Customer agrees to disclose the purpose of the data purchase to Emporis when signing the contract.

6 Prices

All prices quoted by the Provider are net prices subject to 19% value added tax if the Customer resides in Germany. Postage costs incurred by the Provider may be passed on to the Customer. In cases of subscription cycles, prices will be based on the time a subscription is activated by the Provider. Invoicing will take place at the time a service is ordered. Compensation in full is due two weeks after the billing date. Should the contract not be fulfilled as originally scheduled, or is not completely fulfilled in an orderly fashion, then the Provider has the right and obligation to make another attempt at fulfilling the contract within two months time. Should two such attempts fail, The Customer then has the right to annul or void the contract. Any further rights or remediations, in particular compensation claims for damages, are excluded.

7 Price Adjustments

The Provider retains the right to make adjustments to agreed-upon prices. Should any change not be in favor of the Customer, the Provider must so inform the Customer by letter or fax at least one month before a price change is scheduled to become effective. In such a case, the Customer has the right to protest the planned price increase in writing up until two weeks before the increase is to take effect. [The Provider will hereupon make clear his position regarding his request for a price increase.] If the Customer does not exercise his right of protest, the new prices will be effective according to the stated time. Should the Customer protest or reject the price increase, the Provider is then entitled to immediately cancel the contract.

8 Resale

In such cases where the Customer is not an end-user but rather is engaged in resale or transfer (as repackager, mediator, middleman, intermediary, information broker, etc.) of the product to end-users, the following supplementary conditions will also apply (subject to particular contractual agreements made between the Provider and the reseller):

- a) The general conditions described herein will apply to the reseller to the same extent applicable to direct customers of the Provider with the exception of Section 2.2.
- b) The reseller is liable to the Provider for the adherence of all points of general conditions described herein – in particular Section 2.2 – by the end-user.

The Provider must expressly approve any changes or modifications to the product, or any portions thereof, as well as the introduction or attachment of any services or products of the resellers or other service providers. The same applies when this right is granted to third parties. The reseller is obliged to proofread the resold product to guarantee its integrity. In cases of commissioning of online advertisements, the Provider grants agents a 15% AE commission against proof of the agent's activity and invoicing of the agency.

9 Guarantee

Complaints arising from incomplete or defective deliveries must be made within ten workdays in the case of obvious defects, and immediately upon discovery (but no later than six months) in the case of hidden defects. Time will be determined from the time of dispatch (date of sending by the Provider) as well as the day of receipt of a written complaint. Should hidden defects appear, the user is not authorized to make remedies on his own and his use of the product must halt immediately. Where a customer does not keep this agreement, the delivered product will be considered approved. Defects of a portion of the delivered product do not entitle the Customer to raise complaint against the whole product. Claims made against defects that do not substantially impair the use of the product will not be recognized. Claims against defects must be made immediately and in writing. The Provider retains the right to make repairs. Any further claims by the Customer can be made only after two attempts at repairs have failed, or if the Provider refuses to make repairs. The Provider guarantees that

- a) he has the right to sell the product to The Customer,
- b) tools made available to The Customer is in good working order at the time of delivery
- c) data and software are stored in an orderly fashion at the time of delivery
- d) data and software function essentially as described in promotional literature and documentation

Further guarantees are excluded. The effectiveness of the product is not guaranteed for any particular purpose. Defective products will be replaced, provided The Customer adheres to the rules for making claims described herein.

10 Liability

The Provider will be liable only for damages caused by gross negligence or purposeful intent of himself or his assistants. The Provider is not liable for consequential damages, in particular as regards a positive breach of contract, to the extent that such damages fall in the realm of guaranteed features of properties. The Provider is not liable for damages which he could not have reasonably foreseen or which are the responsibility of the Customer or the Customer's agents. The Provider will be liable for the re-creation of data only to the extent that the Customer can demonstrate that such data can with reasonable effort be reconstructed from data kept on hand in electronic or machine readable form. Contractual as well as extra-contractual claims will be governed by the above-mentioned liability laws. The Provider is not liable for any software or hardware errors caused by the online transmission of our data or by the use of our systems.

11 Protection of Data

The contracting parties oblige themselves to handle all information and data obtained by the other contracting party in the execution of this contract in confidence and to not make it accessible to third parties. This obligation remains in effect after the conclusion of the contract. The Provider will store data and information pertaining to the intention of the contract provided by The Customer in a form only readable by machine. The Provider retains the right to transmit data that might benefit a third party should this be necessary for the execution of the contract. The Customer obliges himself, in using the product of portions thereof, to be cognizant of and adherent to German law pertaining to the protection of data.

12 Copyright

The Customer recognizes the copyright of all services by the Provider and his contributors. The Customer obliges himself not to in any way infringe upon the copyright, property right, or trademark protection of the Provider, his associates, or their products. The Customer indemnifies the Provider of all third party claims arising from an infringement of the Customer against the aforementioned obligations. Any further claims by the Provider against the Customer will not be affected.

13 Compensation for Damages

In case of violation by the Customer of the terms of this agreement for services or in case of violation by the Customer of copyright, the Provider is entitled to claim a penalty in an amount ten times the price of the product or service as stated in effective price lists. In cases where the Customer has Online Access, the Provider is also entitled to immediately block this access. Any other outstanding claims by the Provider against the Customer will not be affected by such circumstances.

14 Miscellaneous

Collateral agreements, changes, and amendments must be made in writing to be valid. This will also include waiver of formal requirements. All legal claims will be adjudicated according the laws of the Federal Republic of Germany with the exclusion of standard mercantile laws. The domicile of the contracting parties is Frankfurt. In cases where the concerned businessman has legal authority, special legal powers, or no legal domicile in Germany, Frankfurt will be the exclusive legal domicile of all disputes arising from the contractual relationship. All prior general conditions of business lose their validity herewith.

15 Joint and Several Clause

The invalidation of any one of the conditions named above does not invalidate the whole. Another clause that will match the intention of the original as closely and efficiently as possible will in good faith be substituted for the voided clause.

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