

General Contractual Terms for Individual Services of etracker GmbH

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1 Area of Validity

- (1) These General Contractual Terms (GCT) apply in their current version to all individual services provided by etracker GmbH, Erste Brunnenstraße 1, 20459 Hamburg (hereinafter referred to as "etracker" or "provider" or "we"), regardless of their content and legal nature. They apply in the most recent included version and for future contracts between etracker and the customer, even if they are no longer mentioned in later contracts. Deviating conditions and contract offers from the customer are hereby rejected.
- (2) "Individually provided services" are services that etracker provides taking into account the individual requirements of the customer, e.g. software development or consulting services. For the standard services of etracker, in particular the etracker Analytics, etracker Optimiser and etracker On-Premise products, the General Terms and Conditions (GTC) available on <https://www.etracker.com/en/gtc/> apply.
- (3) These terms and conditions apply only to entrepreneurs, legal persons under public law and special funds under public law.

2 Contractual Conclusion and Changes

- (1) etracker's offers are subject to change and non-binding. The contract is concluded with etracker by a written or electronic order confirmation from etracker.
- (2) etracker is obligated to provide the services agreed with the customer. Unless regulated in a separate agreement, etracker is in no way responsible for the achievement of a certain economic success beyond the actual contract performance.
- (3) Changes to the agreed service require the consent of etracker and the agreement in text form (email, fax, letter) to be effective.
- (4) If the implementation of a change request of the customer has an effect on the performance conditions, etracker can demand an appropriate adjustment of the remuneration as well as the postponement of any agreed dates.
- (5) etracker provides its services to the customer. etracker does not accept any liability towards third parties, subject to an expressly deviating agreement.

3 Special Conditions for Consulting Services

- (1) The regulations of this Section 3 apply to the provision of consulting services by etracker. Consulting services include advising the customer and supporting the customer in the conception and implementation of measures, in particular in the area of usage analysis and user-optimised design of online services.
- (2) Consulting services are provided solely on the basis of the information provided by the customer. Insofar as third parties are consulted for the advisory services and the collection of necessary data at the request of the customer, they shall be used in the name and on behalf of the customer, subject to a deviating agreement.
- (3) etracker is obligated to professionally provide the consulting services under consideration of the named requirements within the framework of the commissioning acc. to Section 2 of these GCT and without any specific consulting results. Once the order has been placed, requirements can only be incorporated in the context of a change agreement.
- (4) If the customer books a consulting package or a set of consulting services in any other form, a period will be specified in the individual agreement in which the service can be claimed (claim period). If the customer does not receive the respectively agreed service in the respectively agreed quantity within the agreed period of time, etracker allows him to claim the unclaimed remainder of the service (remaining service) within a grace period of one month, beginning with the expiration of the claim period. The customer is responsible for the sensible use of the remaining service. Upon expiry of the period of grace, the unclaimed services shall expire, excluding any claims for reimbursement of premiums paid in advance or any reduction of the reimbursement due the service not being claimed.

4 Special Conditions when Creating Software

- (1) The regulations of this Section 4 apply to the creation and adaptation of software for the customer by etracker.
- (2) etracker appoints a project manager, while the customer appoints a responsible contact person. These persons can make decisions or bring them about without delay. The project manager should record decisions in text form. The contact person is to be available to etracker for all necessary information and clarifications.
- (3) Subject to a separate agreement, etracker is not obliged to analyse the existing data, hardware & software or the other system environment of the customer and to that extent relies on the customer to provide the complete information. etracker takes into account the requirements of the customer as long as they are part of the description of services in text form.
- (4) Insofar as the customer's requirements do not yet result from the task according to the contract and as a result a sufficient description of services cannot be provided, etracker details the performance requirements with the support of the customer, draws up a specification and submits them to the customer for approval. The customer is to approve them in accordance with the contract within 14 days in text form. The specification is a binding specification for further work.
- (5) The customer will inform etracker in text form of any change requests regarding software services. If the customer wishes it, etracker will support them in the formulation of the change request in return for payment. For the examination of change requests, etracker is entitled to an appropriate remuneration in accordance with the remuneration rates agreed with the customer, provided a relevant agreement does not already exist according to the respectively valid list prices of etracker.
- (6) etracker is not obligated to install or implement the software if this is not agreed on with the customer. The customer ensures that expert personnel are available for the use of the software at the time of installation at the latest. If no firm hand-over date has been agreed, etracker announces the provision of the service result with a reasonable notice period (at least five days, if possible in view to how busy the schedule is for the respective project).
- (7) etracker is only obligated to transfer or provide the source code or to agree to provide it if and insofar as this is agreed on in writing.

5 Billing

- (1) As far as services are billed according to time expenditure, billing by etracker takes place monthly after provision of services, unless a different agreement has been made with the customer.
- (2) Receivables of etracker become due with billing and are payable within 14 days without deduction. In case of default, etracker is entitled to discontinue the service until the complete fulfilment of all outstanding claims. Further legal claims and rights of etracker remain unaffected.
- (3) etracker retains ownership of the delivered performance results until full payment of all current and future claims arising from the business relationship with the customer has been made. etracker is also entitled to offset outstanding claims against the customer in the event of default with advance payments made by the customer for other etracker services. As a result, the term of prepaid standard products can be shortened when offsetting. If etracker wishes to make use of this right, etracker will inform the customer in the event of a delay of this circumstance and grant a reasonable grace period for payment.
- (4) The customer shall only be entitled to offset if his counterclaims are undisputed or legally established by etracker or result from the same contractual relationship. The customer is only authorised to exercise a right of retention insofar as his counterclaim is based on the same contractual relationship.

6 Contribution of Customer

- (1) The customer must inform etracker of all information relevant to the respective order and inform etracker in good time of any problems or change requirements. etracker can view the customer's communications as correct and complete and is not required to perform any additional investigations. Nonetheless, etracker will point this out to the customer if any incorrectness is detected. Instructions from the customer must be given in good time so that a reasonable deadline for implementation remains.
- (2) The customer provides etracker with only those templates and work materials whose commissioned use by etracker does not violate the rights of third parties. The customer exempts etracker from all claims and rights of third parties. This exemption also includes the costs of a reasonable legal defence within the legal framework.
- (3) The customer is obliged to create all the conditions necessary for the proper execution of the order in their area of operation. This applies in particular to the hardware and software required for the execution of the service, unless expressly provided by etracker. Insofar as etracker is to become active for the customer as agreed in the contract, the customer shall provide sufficient workplaces, training rooms, presentation facilities (projector / flip charts / whiteboard) and other work equipment and cooperative measures which, according to the contract, are not to be provided by etracker.
- (4) The customer is liable for his contributions, in particular they have to check data carriers for viruses and other malware before handover to etracker using a current and state-of-the-art anti-virus program. If the provision of the contractual service is made difficult or impeded by a delayed, incomplete or inadequate fulfilment of the customer's obligation to cooperate, etracker shall be entitled to claim an appropriate compensation for the resulting additional expenses.
- (5) Without having to request it, the customer is obliged to secure the data before transferring it to etracker or before it is processed by etracker.

7 Approval

- (1) In each case, the customer must check the contractual conformity of the deliveries and services as well as the raw and intermediate products provided to him immediately upon receipt and to grant approval immediately. etracker is entitled to demand an interim inspection upon completion of individual phases of work. The approval of a service shall be considered as granted if it is not refused by the customer within 21 days of delivery with a valid justification or if the customer uses the work result. In the case of previous interim approvals, only the contractual conformity of the last delivered part of the service and the interaction of all parts are the subject of the acceptance test for the last item of service.
- (2) At the request of etracker the customer can also declare approvals in text form.
- (3) If approval is refused, the obstacles preventing acceptance must be described in detail. Insignificant defects do not prevent acceptance and must be remedied by etracker within a reasonable period of time. A significant defect is one whose presence eliminates or interferes with the suitability of the service for the agreed purpose, resulting in noticeable additional costs for the customer.
- (4) etracker is ready to support the customer with acceptance tests for a separate fee.

8 Confidentiality

etracker is obliged to maintain secrecy with regard to business and trade secrets as well as all information of the customer designated as confidential which etracker becomes aware of in during the course of execution of the contract.

9 Breaches of Contract

- (1) The delivery / service date or the delivery / performance period, hereinafter referred to simply as "delivery date", is agreed according to the expected performance of etracker and is non-binding and subject to on-time delivery to ourselves and circumstances over which etracker has no control, in particular, non-delivery, incorrect delivery or late delivery. Such events extend the delivery date accordingly, even if they occur during an already occurring delay. In this case, any possible delay may be further delayed by the customer by the duration of the unforeseen event. If such events result in a delay of more than one month, both the customer and etracker, irrespective of other rights of withdrawal, may withdraw from the contract if the delay in delivery / performance is not their fault.
- (2) If the time and effort required increases and the cause lies within the customer's sphere of responsibility, etracker can also demand the reimbursement of its additional costs.
- (3) etracker will only be deemed to be in default of payment when a reminder is sent by the customer in text form, provided the transaction is not to be settled on a fixed date. The agreement of binding delivery dates requires express agreement in text form.
- (4) If the customer, in addition to asserting claims for default damages from the contract, decides to withdraw from the contract or if the customer makes a claim for damages instead of the service, they must grant etracker a reasonable grace period after expiry of the service deadline. However, liability of etracker is excluded if the damage would have occurred even if the delivery date had been adhered to.
- (5) Guarantees of etracker in the legal sense are only available in the form of a guarantee made in writing using the term "guarantee".
- (6) Claims for defects made by the customer become statute-barred within one year from the passing of risk. This does not apply if the law prescribes longer periods and in cases of injury to life, limb or health, intentional or grossly negligent breach of duty by etracker and fraudulent concealment of a defect. The period starts with the time of the passing of risk. The legal regulations regarding expiration inhibition, inhibition and new beginning of the deadlines remain unaffected.
- (7) The parties are aware and agree that it is not possible to exclude software errors under all conditions of use according to the current state of technology. The customer has warranty claims regarding software only if reported defects are reproducible or can be identified by machine-generated expenses. The interaction of software provided or modified by etracker with hardware or software that third parties have created or which are already in use or will be used by the customer and / or other compatibilities is only required of etracker if this is expressly part of the contract.
- (8) If etracker's performance reveals a material defect, etracker shall be given two opportunities to remedy the defect within a reasonable period, unless etracker has ultimately refused to remedy the defect. etracker has the right to choose between the types of defect remediation. The elimination of the defect takes place at the choice of etracker at the customer's location or at etracker's.
- (9) The customer must support etracker to the extent necessary for the removal of defects, in particular at the request of etracker, by providing the rejected software and other similar information and documents helpful for the diagnosis of errors, such as third-party software, memory dumps, error logs, etc. The customer must report defects in a comprehensible form, stating the appropriate information for the detection of defects in text form.
- (10) The warranty expires for performance results that the customer has changed, unless the customer proves in connection with the defect report that the change is not the cause of the defect.

- (11) etracker may demand the reimbursement of its expenses for the defect assessment if a claim from the customer for defects proves to be unjustified or if additional expenditure is due to the fact that the customer has changed the performance results or did not integrate them into his Internet services according to the instructions of etracker.

10 Granting Rights

- (1) All rights to drafts, proposals, tender documents and intermediate results remain with etracker, unless otherwise agreed.
- (2) etracker grants the customer the rights of use for the service result (final result) required for the respectively agreed purpose of use subject to provision of the full compensation by the customer. Unless otherwise agreed in writing, the remuneration only covers the granting of simple, non-exclusive rights of use for the purpose, form of use and period of use according to the original order. Any further use, in particular in or on media not expressly included, in a different geographical area, in processed form (as far as processing is not required for the agreed use) and / or in a different timeframe, requires the granting of explicit additional rights. Transfer of rights of use and sub-licensing require the consent of etracker in writing. etracker is expressly entitled to continue to use the results of the performance as well as the findings, methods and information gained in the course of the provision of services, while keeping confidential the business and company secrets of the customer, and to transfer them to third parties. The granting of exclusive rights of use by etracker requires the express agreement in text form.
- (3) In case of unauthorised use, the customer is obliged to pay reasonable compensation for this use, whereby all further claims and rights of etracker remain unaffected.
- (4) All rights granted are subject to the condition precedent of full payment of the fee due for the entire service. No partial rights are granted for partial payment. The granting of rights becomes ineffective as long as the customer defaults on an ongoing remuneration for the respective performance result.
- (5) If applicable, etracker also makes use of the rights of third parties (third-party licensed material such as software, digital images, etc.) for the services. The customer may use this third-party license material only in connection with and within the scope of the agreed use of the services of etracker. The customer indemnifies etracker from all claims and rights of third parties as a result of the customer exceeding the scope of the usage rights.

11 Third-Party Rights

- (1) etracker is not liable for the competition-law-relevant permissibility of performance results or for their suitability for obtaining industrial or other industrial property rights. etracker does not guarantee that etracker's performance results and in particular their use in the customer's business infringe upon any intellectual property rights (in particular trademarks, designs, patents) of third parties, and is exempt from liability for such violations. etracker is not obligated to perform conflict research unless this has been agreed separately in text form.
- (2) If third-party rights are infringed on by the performance of etracker, etracker will at its own discretion and expense
 - grant the customer the right to use the service or
 - make the service free of property rights
 - take back the service at the invoice price (minus reasonable compensation for use).
- (3) If a third party asserts to the customer that an etracker service would violate their rights, the customer must immediately inform etracker in writing.

12 External Services and Subcontractors

External services are services or parts of services that are not to be provided by etracker. As far as etracker commissions third parties with third-party services in its own name and on its own account in consultation with the customer, the customer indemnifies etracker from any resulting liabilities. The liability of etracker for third-party services (including selection and guidance of debtors) is excluded, unless otherwise agreed with the customer while observing the text form.

The customer undertakes not to commission subcontractors of etracker for a period of one year from the last action of the subcontractor in the context of an etracker service for the customer or through third parties for similar services. For each case of culpable infringement, the customer undertakes to pay a contractual penalty of € 25,000, which is to be offset against further claims for damages by etracker.

13 Other Liability

- (1) etracker is liable for intent and gross negligence in accordance with the statutory provisions. In addition, etracker shall only be liable to the customer for breach of a significant contractual obligation (cardinal obligation) as well as for damages resulting from injury to life, limb or health as well as any guarantees assumed. Significant contractual obligations are those whose fulfilment is necessary to achieve the objective of the contract as well as those on the compliance of which the customer as contractor can regularly rely. In the case of a slightly negligent breach of cardinal obligations, the liability is limited to the contractually typical and foreseeable damage, but no more than half the amount of the total remuneration for the order in which the cause for liability exists, but not exceeding a maximum of € 25,000 per claim. The liability for lost profits is excluded.
- (2) Contractual claims for damages made by the customer against etracker become time-barred one year after the claim is made, unless shorter statutory periods of limitation exist.
- (3) The limitations of the preceding Sections 1 and 2 shall also apply in favour of the legal representatives, organs and vicarious agents of etracker, if claims are asserted directly against them and accordingly also for claims of the customer for reimbursement of expenses.
- (4) The provisions of the German Product Liability Act (Produkthaftungsgesetz) remain unaffected.

14 Miscellaneous

- (1) etracker may store and process personal data of the customer if this is necessary for the execution of the contract and the fulfilment of etracker's contractual obligations to the customer. For data processing, the information in accordance with Art. 13 of the EU General Data Protection Regulation applies, which is provided on our website at <https://www.etracker.com/en/data-privacy/>.
- (2) This contract shall be governed by German law. Insofar as the UN purchasing law incorporated into German law would be applicable to foreign customers, this is excluded.
- (3) If individual provisions of these conditions are ineffective or become ineffective, the validity of the other provisions will not be affected. For the interpretation of the contractual obligations, only the German version of these GCT applies.
- (4) If the customer is a merchant, a legal entity under public law or a special fund under public law or if the customer has no general jurisdiction within the Federal Republic of Germany, Hamburg is the place of jurisdiction for all disputes arising from contractual relationships between the customer and etracker.