

**General Software-as-a-Service Terms  
of econ solutions GmbH, Franz-Josef-Delonge-Strasse 12, 81249 Munich, Germany  
Valid as of 1 January 2023**

**I. Scope of application of Software-as-a-Service Terms**

1. Unless otherwise agreed, the transfer of the software ordered by the Customer and stated in the order confirmation from econ solutions GmbH (hereinafter also referred to as “econ software”) in the form of “Software as a Service” (hereinafter also referred to as “SaaS”) is governed by these General SaaS Terms if the business relationship is with a commercial enterprise, a legal entity under public law or a special fund under public law. Even if not explicitly contradicted by econ solutions GmbH, other terms and conditions applicable at the Customer do not constitute part of this contract.
2. Even if no further reference is made to these SaaS Terms when concluding contracts of the same nature, these contracts are governed exclusively by the following SaaS Terms of econ solutions GmbH in the version available at [www.econ-solutions.de](http://www.econ-solutions.de) at the time when the Customer places its order, unless the contractual partners reach written agreement to other effect.

**II. Conclusion of contract**

1. Offers communicated by econ solutions GmbH are subject to alteration and non-binding unless designated in writing as binding. A legally binding contract only takes effect upon econ solutions GmbH issuing a written order confirmation. econ solutions GmbH may request the Customer to provide written confirmation of oral declarations.
2. The Customer is bound for a four-week period by any declarations of intent issued concerning the conclusion of the contract.

**III. Contractual object, scope of performance**

1. The sole object of these SaaS Terms is the transfer of econ software to the Customer for browser-based or app-based use via the internet, the granting of utilisation rights for econ software required for this purpose in accordance with Section V and the granting of storage space exclusively for the purpose of using econ software and storing the data thereby generated. econ solutions GmbH does not owe deliveries and services of other kinds (e.g. familiarisation training and advisory services). If applicable, such deliveries and services are governed by separate contracts. The maintenance of econ software is additionally governed by the Maintenance Terms appended to these SaaS Terms.
2. Before concluding the contract, the Customer must ensure that the specifications of econ software and of the storage space provided by econ solutions meet its requirements. The Customer is aware of the principal functional characteristics and conditions of econ software.

3. The scope, nature and quality of deliveries and services provided by econ solutions GmbH are determined by these SaaS Terms and the order confirmation issued by econ solutions GmbH and otherwise by the offer tendered by econ solutions GmbH. Any disclosures or requirements not contained therein only become part of this contract if agreed in writing by the contractual partners or confirmed in writing by econ solutions GmbH. Retrospective amendments to the scope of performance require written agreement or written confirmation by econ solutions GmbH.
4. The Customer is aware that it is not entitled to request that its data is stored on a specific server dedicated solely to the Customer and that, based on the “multi-tenant” principle, its data may therefore be deposited on various virtual servers, the selection of which and any change in which is incumbent on econ solutions GmbH. econ solutions GmbH is therefore not liable to provide storage space on a dedicated server installed for the Customer or to store the data generated by the Customer when using the SaaS service relevant to this contract at any specific data centre.
5. The Customer is not entitled to request transfer of the source programme for econ software.

#### **IV. Transfer of software**

1. econ solutions GmbH provides the contractual software in its latest respective version to the Customer via the internet in return for payment for the duration of this contract. To this end, econ solutions GmbH installs the contractual software on a virtual server that can be accessed by the Customer via the internet. econ solutions GmbH is entitled to commission subcontractors to perform the services owed.
2. The contractual software is made available for use by econ solutions GmbH from the internet access point (the interface between the data network operated by econ solutions GmbH and the internet, hereinafter also referred to as the “transfer point”). The contractual software remains on the server at econ solutions GmbH. econ solutions GmbH is not responsible for establishing and maintaining the data link between the Customer’s IT system and the transfer point.
3. The current functional scope of the contractual software is presented in the current performance description, which can be viewed on the website at <http://www.econ-solutions.de/>.

#### **V. Customer rights to econ software**

1. The econ software and user manual provided to the Customer are protected by copyright. Within the relationship between the contractual partners, all copyrights, patent rights, trademark rights and all other rights to the econ software and user manual and to all other items which econ solutions GmbH provides to the Customer or which econ solutions GmbH provides the Customer with access to in connection with initiating and executing the contract are solely attributable to econ solutions GmbH unless the items in question are open source software.

2. The Customer receives a basic right to use econ software that is limited to the duration of the contractual relationship with the Customer. This entitles it to use econ software for the number of measuring points stated in the order confirmation from econ solutions GmbH and, to this end, to run the software on the browser of any number of computers or by using an application for mobile devices (app) provided to the Customer by econ solutions. The Customer is only entitled to use the software to process proprietary data for proprietary purposes. The Customer further ensures that econ software is used solely for the measuring points licenced by the Customer.
3. All other utilisation rights to econ software that are not explicitly granted pursuant to these SaaS Terms remain at econ solutions GmbH. In particular, the right to rent, lend, distribute and make econ software available on demand and the transfer of econ software to other companies in ways not covered by Paragraph 2 (e.g. by application service providing, software-as-a-service services, or the transfer of econ software for the provision of such services by third parties for other companies) is not permitted for the Customer without advance written approval by econ solutions GmbH.
4. The Customer is not entitled to remove or circumvent the protective mechanisms in place to protect econ software against unauthorised use unless this is necessary to attain interruption-free use of econ software.
5. If econ solutions GmbH supplements or replaces the software by way of subsequent delivery, the Customer has the same rights to the software subsequently delivered as to that previously delivered.

## **VI. Provision of storage space**

1. econ solutions GmbH provides the Customer with a defined volume of storage space on one or several virtual servers. The Customer may deposit the data recorded at the measuring points on this virtual server.
2. Acceptance of Customer data from any database maintained by the Customer will only be supported by econ solutions GmbH following separate written agreement and must be paid for separately by the Customer.
3. The data deposited by the Customer on the servers provided by econ solutions GmbH will be stored in an archive for the duration of the statutory retention periods, and as a maximum until the termination of this contract.
4. The Customer is not entitled to assign the storage space provided to it by econ solutions GmbH and/or the contractual software for use by any third party, whether in part or in full, in return for payment or free of charge.
5. econ solutions GmbH is entitled to block access to the storage space with immediate effect if it has reasonable grounds to suspect that the data stored by the Customer is unlawful and/or infringes third-party rights. In particular, reasonable grounds to suspect unlawfulness and/or an infringement of rights apply if courts, authorities and/or other third parties notify econ solutions GmbH of such circumstance. econ solutions GmbH must notify the Customer immediately about the blocking and about the reasons for such. The blocking must be lifted as soon as the suspicions are dispelled.

## **VII. Transfer of documents**

econ solutions GmbH retains rights of title and copyright to all documents transferred to the Customer in connection with the order being placed, e.g. calculations, drawings etc. These documents may not be made available to third parties unless econ solutions GmbH grants explicit written approval for the Customer to do so. Any offer documents, associated calculations and other documents must be returned upon request; in particular, they must be returned if the order is not placed with econ solutions GmbH. The Customer may also not retain any copies of these documents. One exception involves copies arising due to automatic backups that can only be deleted at unreasonable expense.

## **VIII. Processing of personal data**

In the respective employment contracts, econ solutions GmbH has obliged those of its employees that are involved in the project to comply with data secrecy. If, in order to perform the services governed by this contract, it is necessary for econ solutions GmbH to process personal data relating to the Customer or its employees, the contractual partners will reach a separate agreement for this.

## **IX. Issue of data**

1. If requested to do so by the Customer, econ solutions GmbH will issue a copy of the data deposited by the Customer on the storage space allocated to the Customer without delay and at any time, and at the latest upon the termination of the contractual relationship. Taking due account of the Customer's wishes, this data is issued by way of data telecommunications or on a DVD in the data format in which the data is deposited on the data server or in a data format agreed between econ solutions GmbH and the Customer. The expense incurred to extract the data from the IT systems provided by econ solutions GmbH and to convert the data into the format desired by the Customer is to be reimbursed to econ solutions GmbH based on a separate offer issued by econ solutions GmbH.
2. econ solutions GmbH is not obliged to retain the data stored by the Customer following the termination of this contract and issue of the data to the Customer. Unless the Customer notifies econ solutions GmbH within 14 days following such handover that the data thereby issued is unreadable or incomplete, econ solutions GmbH is entitled to block and/or definitively delete the data issued and all copies still potentially existing on servers at econ solutions GmbH, as a result of which the Customer is then no longer entitled to assert any claims to the issue of such data against econ solutions GmbH.

## **X. Data backup**

econ solutions GmbH will perform a backup for the Customer's data on the data servers used to provide econ software to the Customer in accordance with backup concept appended to these SaaS Terms as Annex 3. econ solutions GmbH will only perform a more

extensive data backup to archive the data generated by the Customer using econ software following separate agreement, which must be reached in writing and separately remunerated. econ solutions GmbH will not perform any data backup for other Customer data.

## **XI. Access rights**

The Customer receives access rights comprising a user identified and a password for each of the named users it draws on. The Customer may only disclose the user identifier and password to authorised users. This information must otherwise be treated confidentially and not be provided to third parties. If the services offered by econ solutions GmbH are drawn on by unauthorised third parties using the Customer's access data, the Customer will be liable under civil law for any charges thereby incurred should the Customer be to blame for the access obtained by the unauthorised third party. In this event, econ solutions GmbH is not liable for any impairments to data integrity by unauthorised third parties that have gained possession of the password. Responsibility for immediately changing the password is solely incumbent on the Customer.

## **XII. Time of performance, delay**

1. Disclosures made concerning delivery and performance dates are not binding unless designated as such by econ solutions GmbH in writing. econ solutions GmbH is permitted to provide partial performance; this does not apply if the Customer has no interest in partial performance.
2. The delivery or execution period is deemed to have been complied with if, by the end of such period, the service owed has been performed.
3. Delivery and performance deadlines are extended by the period in which the Customer is in arrears with payments, as well as by any period in which econ solutions GmbH is prevented from providing the delivery or performing the service for reasons for which it is not responsible, as well as by a reasonable start-up period once such reasons no longer apply. Such circumstances also include force majeure and interruptions to operations for which econ solutions GmbH is not responsible. Deadlines are also deemed to be extended by the period in which the Customer has not fulfilled its duty of cooperation, e.g. by not making available key information required to execute the contract, not providing econ solutions GmbH with the access to its own facilities required to execute the contract, not providing econ solutions GmbH with input required to execute the contract or not making its proprietary employees available to a reasonable extent.
4. If the contractual partners retrospectively agree other or additional services which impact on the agreed deadlines, these deadlines are extended by an appropriate period.
5. Any grace period granted to econ solutions GmbH must be appropriate. A grace period of less than two weeks is only appropriate in the event of particular urgency.
6. If the Customer is in arrears with payment of the purchase price, econ solutions GmbH may withdraw from the contract if it has set an appropriate payment deadline for the Customer and such deadline expires without payment. This does not affect any further

claims on the part of econ solutions GmbH. Annualised interest of 8% over and above the respective base rate is charged on any arrears.

7. If the Customer delays acceptance of the delivery or service or if it is culpable of breaching other duties of cooperation, econ solutions GmbH may request 25% of the agreed price without deductions as a fixed minimum damage claim unless the Customer can demonstrate that no damage has occurred, or not in the amount of the fixed claim. econ solutions GmbH reserves the right to assert further claims. If the aforementioned conditions are met, the risk of accidental loss or accidental deterioration in the purchased item is transferred to the Customer from the time at which it enters arrears in acceptance or payment.

### **XIII. Duties of cooperation by the Customer**

1. The Customer assumes responsibility for providing a data connection between the workplaces it has designated for use of the software and the data transfer point defined by econ solutions GmbH. econ solutions GmbH is entitled to redefine the data transfer point at any time if this is required to ensure interruption-free utilisation of the services by the Customer. In this case, the Customer will provide a connection to the newly defined data transfer point.
2. Utilisation of the services offered by econ solutions GmbH in accordance with this contract is dependent on the hardware and software in use at the Customer, including workplace computers, routers, data communication links, etc., meeting the minimum technical requirements for using the respectively current software version offered by econ solutions GmbH and on the users authorised by the Customer to use the contractual software being familiar with the contractual software. To utilise the services offered by econ solutions GmbH, the Customer will only use that hardware and software that meets the minimum requirements listed on the website of econ solutions and/or in the order confirmation. The Customer is responsible for the configuration of its IT system. econ solutions GmbH offers to support the Customer in this respect based on a separate agreement and in return for remuneration.
3. Should the service provided by econ solutions GmbH not be reachable, the Customer will take all reasonable measures (e.g. by way of data backups, error diagnosis, regular review of results, emergency planning) to limit any damages it incurs as far as possible. The Customer bears sole responsibility for providing the infrastructure and in-company internet access points required for this, as well as for upholding the functionality of the work environment for econ software and its technical performance capacity.
4. The Customer commits not to deposit any unlawful content or any other content that infringes the law, official requirements or third-party rights in the storage space thereby provided.
5. Irrespective of the data backup obligation on the part of econ solutions GmbH, the Customer is itself responsible for inputting and maintaining the data and information required to use the SaaS services.
6. The Customer is obliged to test its data and information for viruses and other harmful components prior to input and, to this end, to deploy virus protection programmes consistent with the latest technological standards.

#### **XIV. Material defects**

1. Technical data, specifications and performance descriptions in public statements, and in particular in advertising, do not constitute disclosures as to the characteristics of the product, guarantees or warranties in a legal sense. The functionality of econ software is based on the description provided in the user documentation and the additional agreements reached in this respect.

A material defect does not apply if the system environment at the Customer does not satisfy the system requirements listed in the respectively valid version available at <https://www.econ-solutions.de/downloads?name=systemanforderungen> and the limited functionality or reliability of econ software results from non-compliance with these system requirements.

2. A guarantee or warranty, meaning increased liability or the assumption of an obligation to meet claims, is only deemed to have been provided when the terms “guarantee” and “warranty” are explicitly stated.
3. econ solutions GmbH will transfer and maintain the contractual software and the storage space provided in a condition suitable for use in accordance with this contract. The maintenance obligation does not include adapting the contractual software to amended conditions of use and technical and functional developments, such as changes in the IT environment, and in particular changes in hardware or the operating systems, adapting the software to the functional scope of competing products or establishing compatibility with new data formats.
4. The Customer supports econ solutions GmbH in its error analysis and defect rectification in particular by providing specific descriptions of the problems arising, informing econ solutions GmbH extensively and allowing the time and opportunity required to rectify the defect. The Customer grants econ solutions GmbH immediate access to documents providing insights into the specific circumstances in which the defect arose. Before asserting rectification claims, the Customer ascertains with due care whether there is actually a defect. If the defect claimed does not actually exist, the Customer may be charged for the verification and error remedying services provided by econ solutions GmbH at the respectively valid remuneration rates of econ solutions GmbH, plus expenses incurred, unless the Customer, even when making every reasonable effort and exercising due care, could not have identified the apparent defect.

#### **XV. Defects of title**

1. If econ solutions GmbH is responsible for any infringement of third-party property rights as a result of econ software, econ solutions GmbH may, at its own discretion, either at its own expense and on behalf of the Customer acquire rights of use that are adequate for the contractually agreed use or amend or newly provide the respective service without any impact on its functions, or only such impact that can reasonably be expected of the Customer, in such a way as to ensure that third-party property rights are no longer

- infringed. The assertion of damages or expense claims is governed by Section XVI of these SaaS Terms. This does not affect any other claims on the part of the Customer.
2. The Customer provides econ solutions GmbH with immediate written notification if any third parties assert property rights (e.g. copyrights or patent rights) relating to econ software against it. The Customer authorises econ solutions GmbH with sole responsibility to manage the dispute with the third party. For as long as econ solutions GmbH acts on this authorisation, the Customer may not independently acknowledge or satisfy the claims asserted by the third party without the approval of econ solutions GmbH; econ solutions GmbH will defend itself against the claims asserted by the third party at its own expense and indemnify the Customer for any claims asserted against it unless such claims result from non-compliant conduct by the Customer (e.g. use of econ software in ways contrary to the contract). If the Customer acknowledges the claims asserted by the third party without the prior approval of econ solutions, the Customer will not be indemnified for these claims.

## **XVI. Other liability**

1. econ solutions GmbH bears unlimited liability for damages attributable to intent or gross negligence. Furthermore, econ solutions GmbH is liable for slightly negligent breaches of material obligations whose infringement threatens achievement of the contractual purpose, or for the breach of obligations whose fulfilment is necessary for the correct execution of the contract with the Customer and whose fulfilment the Customer can generally expect. In this case, however, econ solutions GmbH is only liable for foreseeable damages typical to the respective contract. econ solutions GmbH is not liable for slightly negligent breaches of obligations other than for those stated in the preceding sentences.
2. The exclusion of liability governed by this Section XVI does not apply if an exclusion or limitation of liability has been agreed for any damages resulting from the loss of life, physical injury and damage to health that are attributable to a culpable breach of duty by econ solutions, its legal representatives or its auxiliaries. It also does not apply if an exclusion or limitation of liability has been agreed for other damages that are attributable to any intentional or grossly negligent breach of duty by econ solutions or to an intentional or grossly negligent breach of duty on the part of a legal representative or auxiliary of econ solutions. In the event of a culpable breach of a material contractual obligation or of a cardinal obligation (i.e. of an obligation whose fulfilment is necessary for the correct execution of the contract and whose fulfilment the Customer can generally expect), liability is not excluded, but rather limited to foreseeable damages typical to the respective contract. Furthermore, the exclusion of liability does not apply in cases for which the German Product Liability Act (*Produkthaftungsgesetz* – ProdHaftG) requires liability for personal injury or material damages resulting from defects in items delivered and put to private use. It also does not apply when a guarantee has been assumed and assurance of a specific feature provided if a defect covered by such triggers liability on the part of econ solutions.
3. The aforementioned provisions also apply in favour of the legal representatives of and of auxiliaries deployed by econ solutions GmbH.



## **XVII. Limitation period**

1. Defect claims expire 12 months after delivery of the items by econ solutions GmbH to the Customer unless the respective defect was fraudulently concealed.
2. Any claims on the part of the Customer that are not attributable to material defects or to defects of title lapse following expiry of a two-year period starting from the time at which the Customer gains awareness or, in the absence of gross negligence, must have gained awareness of the circumstances underlying the claim. Such limitation arises at the latest upon expiry of the maximum periods stipulated in § 199 of the German Civil Code (*Bürgerliches Gesetzbuch – BGB*).
3. Diverging from the provisions of Paragraphs 1 and 2, any damages and expense claims resulting from intent, gross negligence, guarantees, fraudulent intent or from the loss of life, physical injury and damage to health are in all cases by governed by statutory limitation periods, as are any claims relating to the German Product Liability Act (*ProdHaftG*).

## **XVIII. Confidentiality**

1. The contractual partners commit to treat all non-public information of which they gain awareness as a result of the business relationship concerning business operations at the other contractual partner and/or the products and/or services respectively offered as business secrets.
2. The contractual partners store and secure all documents and information provided to them by the other contractual partner in such a way as to prevent access by third parties. The contractual partners may only refer to the business relationship in their advertising with advance approval of the other contractual partner. Drawings, models, templates, patterns and similar objects provided to the Customer by econ solutions GmbH or paid for by the Customer remain the property of econ solutions GmbH. They may not be transferred or otherwise made accessible to third parties.
3. The Customer only makes those business secrets of econ solutions GmbH with which it is entrusted available to those of its own employees and other third parties who require such information to discharge their duties. It instructs such persons of the requirement to maintain confidentiality concerning these business secrets and obtains written commitments to comply with this confidentiality agreement from those third parties to which the business secrets are transferred with the approval of econ solutions GmbH.
4. econ solutions GmbH processes the Customer data required to execute the order in accordance with the requirements of data protection law. econ solutions GmbH is permitted to name the Customer as a reference customer.

## **XIX. Remuneration**

1. The Customer commits to pay the agreed monthly charge stated in the order confirmation, plus statutory VAT, in return for the transfer of the contractual software and the granting of storage space.
2. The Customer must raise any objections it may have to the invoice for the services performed by econ solutions GmbH within an eight-week period following receipt of the invoice. Such objections must be addressed in writing to the department stated on the invoice. Following expiry of the aforementioned period, the invoice is deemed to have been approved by the Customer. When sending the invoice, econ solutions GmbH will separately inform the Customer of the significance of its conduct in this respect.

## **XX. Contractual obligation, termination of contract**

1. The contract concluded between econ solutions GmbH and the Customer in accordance with these SaaS Terms has an indefinite term and may be terminated by either contractual partner at the earliest after the expiry of the first contract year with a notice period of three (3) months to the end of the respective contract year.
2. Advance warning must be provided of any cessation of the further exchange of services due to compelling reason, with the reason for such always being stated in said notification and the setting of a suitable deadline to address such reason (usually at least two weeks). Such termination may only be declared within two weeks of the expiry of the deadline. Setting such deadline may be waived in the cases covered by statutory requirements (cf. § 323 (2) BGB). The party that is fully or predominantly responsible for the disruption may not request the recession of the contract.
3. To be effective, all declarations relating to termination of the contract must be made in writing.

## **XXI. Place of performance, place of jurisdiction, applicable law**

- 1- The place of performance is the legal domicile of econ solutions GmbH if the Customer is a commercial enterprise, a legal entity under public law or a special fund under public law.
- 2- If the Customer is a commercial enterprise, a legal entity under public law or a special fund under public law, the place of jurisdiction agreed for all disputes arising in connection with the contractual relationship is, at the discretion of econ solutions GmbH and depending on the amount involved, Mannheim Local Court or Mannheim District Court (also the Chamber for Commercial Affairs). The same applies if, upon the lawsuit being filed, the place of residence or habitual domicile of the Customer is unknown or if the Customer has moved its place of residence or habitual domicile abroad. The aforementioned provision also applies to any actions in respect of cheques or bills of exchange. Alternatively, econ solutions GmbH may file a lawsuit at the Customer's general place of jurisdiction.

- 3- This contract is governed by the laws of the Federal Republic of Germany to the exclusion of the UN Convention on the International Sale of Goods (CISG) and the reference norms of private international law.

## **XXII. Concluding provisions**

1. The assignment of receivables that are not cash receivables is only permitted with the advance written approval of the other contractual partner. Such approval may not be unreasonably withheld.
2. The Customer may only set off the invoice against receivables that are recognised by econ solutions GmbH or have been legally upheld. Except for the case stated in § 354a of the German Commercial Code (*Handelsgesetzbuch* – HGB), the Customer may only assign claims relating to the contract concluded with econ solutions GmbH to third parties with advance written approval by econ solutions GmbH. The Customer only has rights of retention or the right to object to the contract not being fulfilled for receivables relating to this contractual relationship.
3. The contractual partners may only impute such receivables as have been legally upheld or are undisputed.
4. If any individual provision of these terms is or becomes invalid or unenforceable, this does not affect the validity and enforceability of the other provisions. The invalid or unenforceable provision will be replaced by a provision that most closely approximates to the economic intention of the contractual partners. The same applies in the event of any omission.

Munich, 1 January 2023