

GENERAL TERMS AND CONDITIONS

of

**Central Institute for Meteorology und
Geodynamics**

**as an institution with partial legal capacity of the
federal state**

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1. General, Scope of Application

- 1.1. The General Terms and Conditions of the Central Institute for Meteorology and Geodynamics as an institution with partial legal capacity of the federal state, hereafter *ZAMG*, apply for all business relationships between *ZAMG* and its customers or persons in receipt of benefit, hereafter "customer" in short.

All services of *ZAMG*, deliveries, offers and other agreements happen only behalf on the basis of the general terms and condition

- 1.2. Deviant, opposing or supplementary General Terms and Conditions of the customer are only then and to the extent integral part of the contract as *ZAMG* agrees expressly to their validity in writing.
- 1.3. If contracts, agreements or offers of the *ZAMG* deviate in particular cases or contain derogations, then these have priority to individual provisions over these General Terms and Conditions. If the General Terms and Conditions only contain declaring and/or additional or concrete agreements, then they apply besides the in particular cases agreed provisions.
- 1.4. All contracting partners of *ZAMG*, who *ZAMG* has current business relations with, will be notified in writing of any changes of these General Terms and Conditions. Here it is enough that *ZAMG* only refers to the changes in the General Terms and Conditions in writing if the General Terms and Conditions are publicly available via the website of *ZAMG* (www.zamg.ac.at). Any changes of these General Terms and Conditions enter in force one month after their announcement.

2. Services of ZAMG

2.1. *Scope of Services*

ZAMG accepts orders in its capacity of an institution with partial legal capacity of the federal state. *ZAMG* provides meteorological and geophysical information whereas the concrete scope of service has to be determined in every individual case.

2.2. *Delivery, Provision*

Delivery of offered services by *ZAMG* is electronic or via retrievals of the *customer* unless in individual cases deviate delivery arrangements are made. The delivery takes place via use of current suitable and state-of-the-art delivery services, such as in particular telecommunication services, i.e. especially telephone, fax and internet etc.

ZAMG retains the right to use newer or other technologies or systems, processes or standards for transmitting of the services due

to technical progress or scientific findings than initially offered. Such possible changes of the type of delivery do not entitle the *customer* to withdraw from the contact or assert any price reduction or other claims whatsoever.

On the other hand the *customer* has to ensure to be equipped with the technical systems and devices, especially e.g. computer, telephone, fax, as well as the necessary software programmes etc., which are necessary for the delivery according to the arrangement and provision of the services of the *ZAMG* to be provided. *ZAMG* assumes no whatsoever liability for possible delays in delivery and service due to absence or non-functioning of the necessary technical equipment of the *customer*. Additionally, the *customer* has to make sure by taking suitable precautions that unjustified access by thirds on the transmitted information does not occur. This concerns in particular the securing of the access to transmitting equipment and the securing of access information (user ID, passwords or the like).

The service to be provided by *ZAMG* is delivered to the (last) announced address of the *customer*.

ZAMG is not obliged to control the proper receiving of the service to be delivered at the *customer's* and therefore forasmuch gives no warranty.

ZAMG assumes no liability for the continuous availability of services. Especially *ZAMG* is not liable for interruption and failure due to technical problems and/or maintenance, lacking and/or corrupted transmitting or other technical problems in connection with the delivery of the services to be provided as long as they have not been caused by *ZAMG* intentionally or grossly negligent.

2.3. *Start of Delivery*

Insofar as there have been no individual deviating agreements, *ZAMG* starts to deliver the contractual agreed on services with the subsequent first day of the month after the effectively realization of the contract.

2.4. *Changes to Services and Technical Progress*

ZAMG reserves the right to extend, change and improve services as long as this by taking account of *ZAMG's* interest is reasonable for the *customer* especially if this is necessary due to amendments or changes in law.

ZAMG will inform affected *customers* about possible changes timely.

Additionally, *ZAMG* is free to use newer of other technologies or systems, processes or standards for the provision of services due to technical progress or scientific findings than initially offered. Any such technical conversion does not entitle the *customer* to withdraw from the contract or assert any price reduction or other claims whatsoever.

2.5. *Free Services*

As long as ZAMG provides free services, these can be ceased at any time and without preannouncement. A right to reduce, convert or refund any simultaneous in return for payment ordered services does not arise from this. The services to be provided due to § 22 Abs. 2 FOG of ZAMG are not affected by this.

3. **Realization of the Contract, Contract Period and Termination**

3.1. *Realization of the Contract*

Offers of ZAMG are non-obligatory and non-binding unless noted otherwise in individual cases.

The contract is accomplished after the written placing of order, however, at the last when accomplishing of the order or signing the contract by all contracting parties.

3.2. *Contract Period*

The duration of the contractual relationship between ZAMG and customer needs to be defined in every individual case.

If the duration of the contractual relationship between ZAMG and customer is not defined in an individual case, then this is considered as a contract for an indefinite period.

3.3. *Termination*

a) Ordinary Termination

Contractual relationships between ZAMG and customer can be terminated by each contracting party in adherence to a three-month cancellation period at the end of the quarter.

b) Extraordinary Termination

As long as there are no deviating agreements, the contractual relationship between ZAMG and customer can be terminated by ZAMG without adherence in the notice period if

- the customer closes the business operation;
- the customer has violated one or more clauses of the negotiated contract between ZAMG and the customer or neglected the interests of ZAMG due to diligence;
- the customer falls behind with the payment of the monthly fee;

- bankruptcy or composition proceedings are instituted against the *customer's* asset or such a proceeding is rejected for lack of cost-covering asset.

Equally contractual relationships between *ZAMG* and *customer* can be terminated by the *customer* without adherence in the notice period due to lack of contrary agreements if

- *ZAMG* discontinues the operation of the branch of business that is needed to fulfil the duties of the contract that has been made after the provisions with the *customer*;
- Bankruptcy or composition proceedings are instituted against the *ZAMG's* asset or such a proceeding is rejected for lack of cost-covering asset.

3.4. *Written Form*

All types of termination must be in written form. Fax and email fulfil the requirement for a written form sufficiently.

4. **Prices and Terms of Payment**

4.1. *Payment*

ZAMG renders services for payment whose amount is determined in individual cases.

4.2. *Maturity*

Payments are, unless agreed on deviations in individual cases, due for payment and to be effected within 30 calendar days after bill receipt without deduction.

4.3. *Value Added Tax and Other Fees and Charges*

ZAMG is exempt from VAT and therefore no subject to turnover tax according to the Value Added Tax Act. Thus the accounted invoiced amounts are net amounts.

Should *ZAMG* become a subject to turnover tax in the future, *ZAMG* will charge the value added tax additionally to the determined payment. In this case the additional charging of the value added tax will be no right of withdrawal for the contracting partner.

Any changes of tax rates, fees and/or charges or other public law charges that fall due in regard to the services that are provided by *ZAMG* are charged at any time from validity of any legal changes and it does not entitle the contractual partner to withdraw from the contract early.

4.4. Value Guarantee

Payments charged by ZAMG for periodically recurring services are indexed. As a basis for calculation serves the Consumer Price Index in the current version disclosed by Statistics Austria. As a reference value the index figure is used that is announced in the month in which the contract is signed. The payment will be adjusted once a year with impact on the current year, always in January by using the current disclosed index figure. Should the Consumer Price Index not be disclosed then the disclosed index of a federal department is used for the basis of value guarantee which is closest to the Consumer Price Index. The right of ZAMG to charge an increase of payment due to index changes expires only then when this right is unclaimed within three years from the relevant index rise. Non-charging or non-raising – independent of the duration – does not count as waiving of charges.

4.5. *Default*

In default of the *customer* ZAMG is entitled to suspend services after previous reminders and setting a 14-days period of grace and under penalty of interruption or cut-off of services. The right of ZAMG to extraordinarily terminate the contracting relationship according to point 3.4.b) remains unaffected of this.

4.6. *Default Interest*

In case that a *customer's* payment of the prescribed amount is overdue completely or partly, so – subject to enforcement of a damage due to delay - interests of 12 % p.a. of the amount that is overdue are charged.

4.7. *Default and Collecting Charges*

The *customer* is obliged in case of default to refund the to ZAMG arising default and collecting charges as far as they are necessary for appropriate prosecution. If ZAMG runs the dunning on its own, the *customer* is obliged to pay EUR 11.00 per dunning as well as for keeping records on the obligation in the dunning per half year an amount of EUR 3.60.

4.8. *Offsetting, Retention*

Against claim of ZAMG as an institution with partial legal capacity of the federal state the *customer* can only set off uncontended, in legal relation or legal determined counterclaims. With claims against the federal state offsetting is excluded. The *customer* is not entitled to withhold payments due to not complete overall services, guarantee or warranty claims or complaints.

5. Compensation, Warranty

5.1. *ZAMG* has introduced a quality management system (QM) and is since October 2003 certified (ÖNORM EN ISO 9001:2000). One of the aims of QM is that data availability is at 98%. As with the mass of data that is EPD-assisted processed losses cannot be excluded entirely, data loss within the QM-aim is neither reason for complaint nor price reduction.

5.2. *ZAMG* renders its services according to accepted rules of science and technology.

5.3. Because the actual weather situation cannot always be forecasted reliably, the services of *ZAMG* are only forecasts, which rely on experiences with certain possibilities. Divergences of the actual weather situation cannot be avoided.

Therefore *ZAMG* assumes no liability of any kind to the *customer* or to third parties related to the *customer* in connection with a possible non-accordance of meteorological data with the actual emerging weather situation or weather situations occurred in the past.

5.4. In case that weather stations operated by *ZAMG* are out of work and an acquisition of replacement is not possible or only under considerable economical and/or technical effort, then *ZAMG* is entitled to delay its services for the time of the hindrance or – in case of an expected permanent – non-availability of data – to withdraw fully from the contract or partially with regard to the unfulfilled part.

5.5. *ZAMG* is not liable for any delay in delivery and/or services that impede *ZAMG*'s services significantly or make it impossible due to force majeure or other occurrences (especially strike, blocking, regulatory action, failure or disturbance of communication networks etc), even when they occur to suppliers or contractors of *ZAMG* or their sub-suppliers or subcontractors and are not foreseeable at contract formation.

5.6. For every claim of damages against *ZAMG* due to any violation of obligations of *ZAMG* for whatever legal basis, *ZAMG* is only liable for intent and gross negligence. Liability for slight negligence is excluded.

5.7. Any claims for compensation must be filed in writing at *ZAMG* within six months from awareness.

5.8. In regard to any deficiencies apply the statutory provisions especially § 377 UGB idjgF if in these General Terms and Conditions or in individual contracts agreed on differently. Basis of warranty/liability for defects is mainly the agreement on the quality of the services. The warranty period is six months from delivery of the particular services to the *customer*. The delivery shall be deemed successfully in

case of doubt with electronic access/ processing of the services delivered by ZAMG.

- 5.9. Due to warranty the *customer* is only entitled with remediable deficiencies to improvement and supplement of the missing parts if the deficiencies within the service provision are justifiable by ZAMG.
- 5.10. ZAMG is only liable for delay or impossibility of services if they are justifiable by ZAMG and for availability of guaranteed features. The substitution of consequential damages and pure financial losses, unrealized profit or savings, loss of interests and of damages due to claims of third parties against the *customer* is excluded to the extent admissible by law. The burden of proof for the presence of gross negligence resides with the aggrieved party.
- 5.11. All liabilities for gross negligence is limited consensually to a maximum amount of EUR 440 000,-.
- 5.12. Additionally, ZAMG is not liable for – according to the provisions of this contract – provided information for deduced products and services of the *customer*. The *customer* agrees to indemnify and hold harmless ZAMG due to any claims of third parties.

6. Rights of Use

- 6.1. The *customer* has the non-exclusive right to use the provided meteorological/geophysical information timely restricted to the duration of the contract, locally restricted to the contract territory – if there lacks a corresponding determination in individual cases then the Austrian territory – and factually restricted to the purpose of the contract. Usage beyond that is prohibited without written approval of ZAMG.
- 6.2. The copyright of the provided services according to the individual contract agreements and information especially meteorological prognosis data, graphics, visualisations etc. remains with ZAMG.
- 6.3. The *customer* is not entitled – unless otherwise expressly agreed in individual cases – to share with or provide third parties in any way with services rendered by ZAMG, especially provided information and services independent of whether this happens in written form, on data storage devices or in electronic form or orally – whether free of charge or against payment. “Third parties” is every person that is different from the *customer* even when the third party is related to the contracting party in any way.
- 6.4. If the customer is entitled in individual cases to further use and/or publication of services provided by ZAMG, then ZAMG has to be quoted as source and is to be referred to as: © ZAMG.

7. Place of Fulfilment, Applicable Law, Place of Jurisdiction and other

7.1. *Place of Fulfilment*

Place of fulfilment is Vienna.

7.2. *Applicable Law*

Austrian Law is applicable exclusively excluding the conflict-of-law rules.

7.3. *Place of Jurisdiction*

Exclusively place of jurisdiction is the competent court of Vienna Inner City.

7.4. *Severability Clause*

Should parts of a contract or of these General Terms and Conditions be or become invalid, void or reviewable or should the contract be incomplete, then the other provisions remain unaffected by this and are to be interpreted or amended so as to achieve as closely as possible the intended purpose in a legally permissible manner.

7.5. *Information to contracting parties*

Information and delivery to the *customer* are to be addressed to the last notified address. Should the *customer* not announce or not announce in time changes of address in written form, then ZAMG is regarding to this to be completely indemnified and held harmless.

7.6. *Non-assignment clause*

Claims against ZAMG may not be assigned unless ZAMG has approved to the assignment of claim in written form.

7.7. *Consumer Business*

For the legal relationship to customers according to KSchG apply the provisions above insofar as KSchG does not provide other mandatory provisions.