

Provision of Everbase Software
General Terms and Conditions of EVB Everbase GmbH for Companies
("General Terms and Conditions for Companies")

1. Scope of the General Terms and Conditions

- 1.1 The General Terms and Conditions for Companies apply to all contractual relationships, in which EVB Everbase GmbH (hereinafter referred to as "Everbase") provides software to other companies within the meaning of Section 14 *BGB* [German Civil Code], i.e. natural persons or legal entities which, when concluding a legal transaction, are acting in the performance of their commercial or independent professional activities, public law entities or special funds under public law (hereinafter referred to as "Customers"). The General Terms and Conditions for Companies shall apply as amended at the time the contract is concluded also to future contracts, without Everbase having to refer to them again. The provisions shall apply accordingly to pre-contractual relationships.
- 1.2 These General Terms and Conditions exclusively shall apply. Everbase shall not recognise differing or conflicting terms and conditions unless Everbase has expressly consented to them in writing. This requirement of consent shall also apply in particular where Everbase makes the delivery to the Customer without reservation, having knowledge of the Customer's general terms and conditions.
- 1.3 References to the validity of legal provisions are for the avoidance of doubt only. Even without such references, legal provisions shall, therefore, apply unless amended directly or expressly excluded in these General Terms and Conditions.

2. Definitions

- 2.1 "*Software documentation*" means the documentation belonging to the contractual software. This includes a description of the features of the software which are provided via the Everbase website.
- 2.2 "*Third-party software*" means all software from companies other than Everbase.
- 2.3 "*Software*" means all Everbase software which has been developed by or for Everbase, including all software updates for this software.
- 2.4 "*Affiliated companies*" means all companies affiliated with the Customer pursuant to Sections 15 et seq. *AktG* [German Stock Corporation Act].
- 2.5 "*Confidential information*" means all information and documents of the respective other party which are identified as confidential or are considered from the circumstances to be confidential, especially information concerning operational processes, business relations and know-how.

3. Delivery and delivery item

3.1 Delivery item

Everbase shall deliver the contractual software pursuant to the product description on the website and the installation instructions which belong to the product (hereinafter referred to collectively as "specification"). The specification conclusively stipulates the features of the contractual software. Quality beyond this shall not be due from Everbase. In particular, the Customer cannot derive any quality beyond this from public statements or advertising materials as long as Everbase has not expressly confirmed the quality beyond this in writing. Everbase shall give only express guarantees in written form.

3.2 Delivery

- 3.2.1 The contractual software shall be delivered by providing a download version with an unlock key which can be accessed via the Everbase website.
- 3.2.2 The contractual software shall be delivered in executable form (in object code) including operating instructions (user documentation or online-help) and installation instructions. The operating instructions and installation instructions can be provided to the Customer in electronic form as well.

3.3 Installation

The Customer shall install the contractual software and put it into operation. At the Customer's request, Everbase can install the software but Everbase is not obliged to do so. All support services provided by Everbase at the Customer's request (especially installation) shall be remunerated according to actual expense unless otherwise agreed.

4. Customer's rights of use

4.1 Scope of the rights of use

- 4.1.1 Everbase shall grant the Customer and the companies affiliated with the Customer a non-exclusive and non-transferable right of use unlimited in time, to use the contractual software unchanged, within the scope of the type of use contractually agreed, on the devices for which it is intended, in the context specified below.
- 4.1.2 The Customer shall have a volume licence with the contractually agreed number of user licences. Each user licence covers the right to install the contractual software on up to four devices (e.g. desktop PC, laptop, tablet and smartphone). The Customer's employees shall register in the system with their business email address.

4.1.3 The Customer may distribute the user licences freely among its employees. If a user licence is to be transferred from one employee to another, the Customer shall delete all copies of the contractual software for the previous employee and delete the user account and provide proof of documentation of the transfer.

4.2 Copies, processing

4.2.1 The Customer may make a backup copy of the installation file with the contractual software which must bear the copyright notice of the original data carrier. If the software was delivered as a download version, Everbase shall be expressly designated holder of the rights. The Customer may not make other reproductions which also include the output of the program code to a printer.

4.2.2 The translation, adaptation, arrangement and other alteration of the Everbase software and the reproduction of the results realised shall not be permitted by the Customer without the express written authorisation of Everbase. Intervention in the source code of the programs is also forbidden without the written authorisation of Everbase. This shall not affect the Customer's rights according to Section 69 e *UrhG* [German Copyright Act].

4.3 Change of hardware

The Customer may change the hardware at any time but must then immediately delete the contractual software on the hardware previously used.

4.4 Right of use for software revisions

If the Customer receives copies of newer versions of the contractual software from Everbase (for example as part of maintenance) which replace the software previously provided, the Customer's right of use shall pass to the new version. The right of use as regards the earlier version shall lapse as soon as the Customer goes live with the new version. The Customer shall, however, have the right to use the new version alongside the old version for a period of five months for test purposes.

4.5 Transfer of the licences

4.5.1 Rental of the contractual software or other provision of the software for valuable consideration to third parties for temporary use shall not be permitted.

4.5.2 The Customer may sell or give away the volume licence for the contractual software in its entirety permanently to third parties. The prerequisite for this is, on the one hand, that the Customer delivers all copies of the contractual software to the acquiring party (including, if any, the backup copy stated in sub-paragraph 4.2.1) or destroys the copies not delivered. Furthermore, effective transfer is subject to the condition that the acquiring party declares its agreement in writing, to the Customer as well, that the terms and conditions stated in this paragraph 4. shall continue in force.

5. Subsequent licensing, review

5.1 The Customer may use the contractual software only to the extent contractually agreed. If the number of users exceeds the contractually agreed number of licensed workstations, a separate contract with Everbase shall be required concerning the additional scope of use (subsequent licensing). Subsequent licensing shall be based on the Everbase price lists valid at the time of the subsequent licensing.

5.2 The Customer must keep records of the users of the registered workstations which enable the Customer to check itself at all times the extent of actual use of the contractual software.

5.3 Everbase shall have the right to audit whether the Customer uses the contractual software to the extent contractually agreed. Everbase shall inform the Customer at least one month in advance if Everbase intends to verify the implementation of the contract. Everbase shall engage an independent auditor who is bound by an obligation of confidentiality to carry out the verification. An inspection shall take place during normal business hours and may not unreasonably interfere with the Customer's business processes and operations. The Customer shall be obliged to provide the independent auditor with the necessary information for the audit and access to systems.

6. Remuneration, payment terms, retention of title

6.1 The Customer shall pay Everbase the contractually agreed remuneration plus value added tax at the respective legally valid rate. If data carriers are physically dispatched, transport and packaging costs shall be included in the price.

6.2 The Customer shall have a right of set-off only if its claims have been recognised by declaratory judgment or they are not disputed by Everbase. The Customer shall only be authorised to exercise a right of retention to the extent that the Customer's counterclaim is based on the same contractual relationship.

6.3 The remuneration shall be due when the contract is concluded unless otherwise agreed by the parties. If the invoice specifies a payment term or such a payment term was otherwise agreed, the Customer shall be in default upon its expiry but at the latest 30 days after the due date and receipt of the invoice unless the Customer is not responsible for this. During default, the remuneration shall bear interest at the respective legally valid rate of default interest. Everbase reserves the right to assert further damage caused by default.

6.4 All prices exclude value added tax which shall be added at the respective legally valid rate.

*** 6.5 All rights to the contractual software shall remain with Everbase until the contractually agreed remuneration is paid.

7. Duties to cooperate and inspect

- 7.1 The Customer shall acquaint itself with the main features and technical requirements of the contractual software. It shall be incumbent upon the Customer to satisfy itself that the contractual software conforms with the Customer's wishes and expectations.
- 7.2 It is the responsibility of the Customer to provide the IT systems necessary for the proper operation of the contractual software.
- 7.3 The Customer shall install immediately the security updates provided by Everbase. If the Customer fails to carry out such an installation, does not do so immediately and/or not properly, Everbase shall not be liable for damages connected therewith.
- 7.4 The Customer shall test the contractual software extensively under realistic conditions for the absence of defects before going live with the contractual software. The Customer shall take precautions in the event that the contractual software does not work properly (in particular data backup, monitoring of software operation).
- 7.5 The Customer shall be subject to all obligations to inspect and give notice of defects according to Section 377 HGB [German Commercial Code] in relation to all deliveries and services of Everbase. In addition, the provisions of these General Terms and Conditions shall apply (see in particular paragraph 7.6 and 8.3).
- 7.6 The Customer shall give Everbase notices of defects resp. notify Everbase of defects in writing, precisely stating the problem resp. error indications.
- 7.7 If the Customer fails to comply with its duties to cooperate and inspect, the Customer shall bear the disadvantages arising therefrom and any additional costs incurred.

8. Material defects and defects in title, other impaired performance

- 8.1 Everbase shall remedy defects in the contractual software within the warranty period of one year as of delivery to the Customer after the Customer's written notice if the defects render the contractual software ineffective or reduce its suitability for the usual or contractually agreed purpose.
- 8.2 Everbase shall remedy the defect within a reasonable period, after receipt of a corresponding written notice, by Everbase delivering at its option a substitute, remedying the defect or delivering an equivalent workaround concerning the features. If remedying a defect fails within a first appropriate extension period set by the Customer, the Customer shall set a further appropriate extension period in writing and can rescind the contract after its expiry without success or request a reduction in the remuneration. There shall be no right of rescission in the case of insignificant defects. The Customer shall also be entitled to the rights described in sentence 2 if Everbase refuses substitute delivery, remedy of the defect and delivery of a workaround according to sentence 1 or substitute delivery, remedy of the defect and delivery of a workaround according to sentence 1 is unreasonable for the Customer.
- 8.3 The Customer shall give notification of any defects occurring immediately and in writing but at the latest within 7 (seven) working days after they become known. It shall be incumbent upon the Customer to support Everbase in remedying a defect as far as possible, in particular to communicate information required to remedy a defect and, if necessary, to make error logs available. Everbase shall not, by negotiating on any notices of defect, waive the defence that the notice was not in due time, was unfounded in fact or otherwise insufficient.
- 8.4 Everbase shall not have a warranty obligation for defects caused by use of the contractual software which is not in accordance with the contract.
- 8.5 The Customer shall have no further warranty claims irrespective of any claims for fraudulent intent and in the case of a guarantee of the quality of the software.
- 8.6 If a third party asserts rights which conflict with the exercise of the Customer's right of beneficial use granted under the contract, the Customer shall notify Everbase of this immediately in writing. The Customer shall make acknowledgements, undertake settlement agreements and legal disputes in court with the third party only in agreement with Everbase or shall authorise Everbase to conduct the dispute.
- 8.7 In the case of proven defects in title, Everbase shall warrant supplementary performance by providing the Customer with a legally sound possibility of using the contractual software or modified software. The Customer must adopt a new software version if the range of contractually agreed features is retained and adoption is not unreasonable for the Customer.
- 8.8 If, apart from liability for material defects and defects in title, Everbase does not provide contractually agreed services or does not do so properly, the Customer shall notify Everbase of this defect in writing and set an extension period, during which Everbase shall take remedial action.
- 8.9 The limits stipulated in paragraph 9 shall apply to damages or compensation for wasted expenditure.

9. Liability

- 9.1 Unless otherwise stated in these General Terms and Conditions including the provisions set forth below, Everbase shall be liable, in the case of violation of contractual and non-contractual duties, according to the relevant statutory provisions.

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- 9.2 Everbase shall be fully liable according to statutory provisions for damages, for whatever legal reason, in the case of intent and gross negligence, likewise in the case of damages arising from injury to life, limb or health and in the cases stipulated in paragraph 9.4.
- 9.3 Everbase shall otherwise be liable in the case of ordinary negligence only for damages arising from the violation of a material contractual obligation (= obligation, the fulfilment of which makes the due performance of the contract at all possible in the first place, and where the Customer regularly relies on and may rely on compliance with such obligation); in such case, liability shall be limited, however, for Everbase to compensation for foreseeable damage which typically occurs.
- 9.4 The limitations of liability arising from the above paragraph shall also not apply if Everbase fraudulently conceals a defect or has assumed a guarantee for the quality of the contractual software or the existence of an outcome of performance. This shall also apply to possible claims by the Customer under the *Produkthaftungsgesetz* [German Product Liability Act] or in the case of other mandatory statutory liability.
- 9.5 All claims made against Everbase for damages or compensation for wasted expenditure shall be subject to a limitation period of one year unless one of the cases stated in paragraph 9.2 or 9.4 exists, in which case the statutory limitation period shall apply. The limitation period shall commence pursuant to statutory provisions.
- 9.6 The Customer must take into account possible contributory negligence.

10. Confidentiality

- 10.1 The parties agree to maintain silence about confidential information.
- 10.2 This obligation does not include such confidential information
- a) which is proved to have been known to the recipient already when the contract was concluded or was made known to the recipient thereafter by a third party without violating this confidentiality agreement, statutory provisions or administrative orders;
 - b) which is in the public domain when the contract is concluded or enters the public domain thereafter unless this is based on a violation of these General Terms and Conditions;
 - c) which must be disclosed by reason of legal obligations or pursuant to an order of a court or an authority. If admissible and possible, the recipient obliged to disclose shall notify the other party in advance and give the other party the opportunity to take action against the disclosure.
- 10.3 The parties shall allow access to confidential information only to advisors who are subject to professional secrecy or on whom obligations have been previously imposed which correspond to the confidentiality obligations of these General Terms and Conditions. Furthermore, the parties shall disclose the confidential information only to those employees who need to know it to implement these General Terms and Conditions, and shall bind those employees to maintain confidentiality to the extent admissible under labour law, also for the period after they have left.

11. Data protection

- 11.1 The parties shall comply with data protection regulations.
- 11.2 Reference is further made to the content of the Privacy Policy of Everbase under <https://www.everbase.net/legal/privacypolicy.pdf>

12. Final provisions

- 12.1 Amendments to or modifications of these General Terms and Conditions shall only be valid when given in writing. This shall also apply to the waiver, amendment or modification of the written form clause.
- 12.2 Legally relevant representations and notifications (e.g. notices setting deadlines, notices of defects, declarations of rescission or reduction), to be provided by the Customer to Everbase after conclusion of the contract, shall only be valid when given in writing.
- 12.3 The legal relationship of the parties arising from or in connection with these General Terms and Conditions is governed exclusively by the law of the Federal Republic of Germany, to the exclusion of the UN Convention on the International Sale of Goods. Any legal disputes arising from or in connection with these General Terms and Conditions shall be settled exclusively before a competent Hamburg court of law.