

Provision of Everbase Software
General Terms and Conditions of EVB Everbase GmbH for Consumers
(“General Terms and Conditions for Consumers”)

1. Scope of the General Terms and Conditions and conclusion of contract

- 1.1 The General Terms and Conditions for Consumers apply to all contractual relationships in which EVB Everbase GmbH, Am Kaiserkai 10, 20457 Hamburg, Tel. +49 40 609 450 8-0, entered in the commercial register of Hamburg Local Court under HRB 146618, represented by its Board member Ulrich Dreyer, VAT ID No: DE 285 309 525 (hereinafter referred to as “Everbase”) provides software to consumers within the meaning of Section 13 *BGB* [German Civil Code] i.e. natural persons who conclude a legal transaction for purposes which cannot primarily be attributed either to their commercial or independent professional activity (hereinafter referred to as “Customers”).
- 1.2 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.
- 1.3 The quotations made on the EVB website are only a non-binding request for Customers to make offers. By sending an order, the Customer submits a binding offer within the meaning of Section 145 *BGB*. The Customer shall receive a confirmation from Everbase by email, stating the Customer’s order again (hereinafter referred to as “Order Confirmation”). The contract between the Customer and Everbase shall be concluded with binding force by the Order Confirmation but at the latest upon delivery pursuant to paragraph 3.2.1 of these General Terms and Conditions.
- 1.4 The contract shall be concluded in German.

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.

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 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).
- 4.1.3 The Customer may distribute the user licences freely. If a user licence is to be transferred from one device to another, the Customer shall delete all copies of the contractual software on the previous device 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.

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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

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).

5.2 Subsequent licensing shall be based on the Everbase price lists at the time of the subsequent licensing which Everbase shall provide to the Customer upon request immediately and free of charge.

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 The Customer can make payment by Paypal and direct debit.

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

7. Duties to cooperate

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).

8. Instructions on withdrawal

Right of withdrawal

The Customer has the right to withdraw from this contract within fourteen days without giving any reason.

The withdrawal period will expire after 14 days from the day the contract is concluded.

To exercise the right of withdrawal, the Customer must inform Everbase:

EVB Everbase GmbH
Am Kaiserkai 10
20457 Hamburg
email: service@everbase.net

of his/her decision to withdraw from this contract by an unequivocal statement (e.g. a letter sent by post or email). The Customer may use the attached model withdrawal form <https://www.everbase.net/legal/modelwithdrawalform.pdf> , but it is not obligatory.

To meet the withdrawal deadline, it is sufficient for the Customer to send the communication concerning his/her exercise of the right of withdrawal before the withdrawal period has expired.

Effects of withdrawal

If the Customer withdraws from this contract, Everbase shall reimburse to the Customer all payments which Everbase has received from the Customer, including the costs of delivery (with the exception of the supplementary costs resulting from the Customer's choice of a type of delivery other than the least expensive type of standard delivery offered by Everbase), without undue delay and not later than fourteen days from the day on which Everbase is informed about the Customer's decision to withdraw from this contract. Everbase will carry out such reimbursement using the same means of payment as the Customer used for the initial transaction, unless otherwise expressly agreed with the Customer; in any event, Everbase will not charge the Customer any fees as a result of such reimbursement.

Exclusion and expiry of the right of withdrawal

The right of withdrawal does not exist inter alia for contracts to deliver computer software in a sealed pack if the seal was removed after delivery.

The right of withdrawal shall furthermore expire in the case of a contract for the delivery of digital content which is not on a physical data carrier if Everbase has started to execute the contract after the Customer has expressly consented to Everbase starting to execute the contract before expiry of the withdrawal period and has confirmed his/her knowledge that he/she loses his/her right of withdrawal by consenting to the start of execution of the contract.

End of instructions on withdrawal

9. Warranty, rights of third parties

- 9.1 Statutory warranty regulations shall apply.
- ... 9.2 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 text form (e.g. by telefax or email). 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.

- 9.3 The limits stipulated in paragraph 10. shall apply to damages or compensation for wasted expenditure.

10. Liability

- 10.1 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.
- 10.2 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 10.4.
- 10.3 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.
- 10.4 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.
- 10.5 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 10.2 or 10.4 exists, in which case the statutory limitation period shall apply. The limitation period shall commence pursuant to statutory provisions.
- 10.6 There is no connection between the reversal of the statutory rules concerning the burden of proof and the foregoing provisions.

11. Data protection

- 11.1 The parties shall comply with data protection regulations.

Reference is further made to the content of the Privacy Policy of Everbase which the Customer can view, download and print out under <https://www.everbase.net/legal/privacypolicy.pdf> or request Everbase to send at any time free of charge.

12. Text form of declarations, applicable law, dispute settlement

- 12.1 Legally relevant representations and notifications (e.g. notices setting deadlines, 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 text form (e.g. by telefax or email).
- 12.2 The legal relationship of the parties arising from or in connection with these General Terms and Conditions is governed by the law of the Federal Republic of Germany, to the exclusion of the UN Convention on the International Sale of Goods. This shall not

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affect any mandatory statutory provisions which apply to the State in which the Customer has his/her habitual residence.

- 12.3 The EU Commission provides a platform for out-of-court dispute settlement procedures. This gives consumers the opportunity first to clarify disputes in connection with their online order out of court. The dispute settlement platform is available at: <https://ec.europa.eu/consumers/odr/>. Apart from this, Everbase does not take part in dispute settlement procedures before a consumer arbitration service (Section 36 VSBG [German Law on Dispute Settlement for Consumers]).

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