

## General Terms and Conditions of Sale and Licensing

Issue: May 2001

### I. Scope

These General Terms and Conditions shall apply for all contracts for supplies and services, including consulting services, between **Terra Map Server GmbH, Stockholmer Allee 24, 44269 Dortmund, Germany, represented by the Managing Director F.-J. Grosse Enking** (hereinafter referred to as "Terramapserver") and its contractual partners (hereinafter referred to as "clients"). These General Terms and Conditions shall also apply for all future business relations, even if they are not explicitly re-agreed upon. Terramapserver reserves the right to amend these General Terms and Conditions to a reasonable extent. The amended General Terms and Conditions become valid on their publication on Terramapserver's Internet homepage ([www.terramapserver.de](http://www.terramapserver.de)) for all Terramapserver's services used as from this date onwards. The valid General Terms and Conditions which are available under the above-referenced address can also be printed out at any time.

### II. Obligation to Perform Services

1. The scope of services which Terramapserver contractually undertakes to perform results from the respective individual contracts which may also be concluded online. If no separate individual contract is concluded, Terramapserver's obligation to perform its services results from the order confirmation which is categorically sent by e-mail. On sending off his or her purchase order, the client undertakes to adhere to his or her contractual declaration (§ 145 of the German Civil Code); the contract comes into effect by Terramapserver's order confirmation or by prior implementation of the services involved.

2. Terramapserver reserves the right to rescind concluded contracts until such time as Terramapserver performs the services or supplies the items involved. In this case, the client is then merely entitled to remuneration for action already taken, investments made and payments effected; any further claims, in particular claims for damages, are excluded.

3. If Terramapserver's contractual partner is a natural person who has concluded the legal transaction involved for a purpose which cannot be allocated to either his or her commercial or free-lance activities, this client is then entitled to **rescission in line with § 361 a of the German Civil Code**. Rescission need not involve any justification but has to be declared within a period of two weeks in writing by using a different permanent data medium, e.g. by e-mail, or by returning the supplied data medium; timely dispatched notification suffices for the purpose of adhering to the above-referenced period. With regard to the delivery of any data medium, this period is deemed to commence as per the date of its receipt by the client. In the case of other services, this period is deemed to commence as per the date of contract conclusion.

3. The client is **not entitled to rescind a contract** with regard to the purchase / licensing of digital contents of any kind, in particular aerial photographs, maps, geo-data and software which is sent online. If such items are sent offline to a client on a data medium, the client's right of rescission expires when the client removes the seal on the supplied data medium.

4. The client's **right to rescind the contract expires** in any case when Terramapserver's services are used by the client or when digital contents sent online are stored on the client's computer (user memory suffices). In this case, only statutory warranty rights shall apply.

5. If the client makes use of his or her right to rescind the contract, he or she shall bear the costs incurred by returning the data medium up to a commodity value of € 40.00. This shall not apply if an item other than the one ordered is supplied.

### III. Registration, Client's Acquisition of Rights

1. Upon registration, the client is obliged to state his or her full, correct details. He or she shall ensure that his or her allocated access code / password is not disclosed to any other person; the client assumes liability for any misuse for which he or she is responsible.

2. The client registered by Terramapserver can download the items offered by Terramapserver or have these items sent online / offline and, on payment, use

these items commensurate to the extent permitted **under the separately accepted terms and conditions of usage**. The terms and conditions of usage which appear on screen before the digital contents involved are downloaded or sent determine the scope of the usage rights granted to the client. Any other usage or further usage (e.g. follow-up usage) is herewith excluded. In the case of offline delivery, any licensing conditions supplied together with the data medium shall be observed when the client breaks open the seal on the data medium.

3. If no separate licensing conditions have been agreed upon or prove to be ineffective or incomplete, the client will, in the event of any doubt, receive a non-exclusive, non-transferable usage right for his or her own purposes. Such rights may not be leased to third parties.

4. If the client uses the licensed items in a manner other than that granted to him or her or in any other illegal way and if Terramapsver is then claimed to this effect by any third parties, the client shall indemnify Terramapsver against such claims in the form of payment.

#### **IV. Delivery**

If offline delivery has been arranged, the items involved will be supplied ex stores to the delivery address specified by the client. The risk associated with the items will be transferred to the client as soon as the items leave Terramapsver's premises or stores and are handed over to the carrier. This shall also apply in the event of partial delivery. Details about the delivery period are non-binding unless, in exceptional circumstances, a binding delivery date has been contractually specified.

#### **V. Payment**

1. Unless otherwise agreed, the payment to be effected to Terramapsver shall become due immediately upon conclusion of the contract. If the client defaults payment, Terramapsver is entitled to charge default interest at a rate of 5% above the basic interest rate defined by § 1 of the German "Diskontsatz-Überleistungsgesetz" dated June 9, 1998 (German Civil Code I, 1242). In the event of non-payment despite the fact that payment is due, the client shall be deemed to default a) if the performance period has

been specified on a calendar basis, b) if Terramapsver reminds the client to effect payment after the due date, or c) without any reminder to effect payment, 30 days after the due date for payment and receipt of an invoice or equivalent demand for payment issued by Terramapsver. On request, the client shall confirm in writing receipt of the invoice and the date of receipt.

2. The client is also obliged to pay interest at a rate of 8% p.a. on the payment to be effected as from the date on which he or she can use Terramapsver's services, unless and for such time as this payment is deferred.

3. All Terramapsver's claims shall immediately become due if the terms and conditions of payment are not observed or if Terramapsver is notified about circumstances which may reduce the client's credit standing. In such instances, Terramapsver is also entitled to perform outstanding services only against advance payment or to demand reasonable collateral.

4. If Terramapsver's prices do not include any value-added tax, the quoted price shall be deemed to be the gross price for end users and the net price for dealers.

#### **VI. Set-off**

There shall be no set-off against the client's counter-claims which are disputed by Terramapsver. The client is entitled to retention insofar as this right is based on the same contractual relationship.

#### **VII. Reservation of Title**

1. Insofar as Terramapsver supplies the client with data media, hardware or other items (products), these items shall remain Terramapsver's property (goods under reservation) until full payment has been effected or, in the case of commercial clients, until all claims have been met, irrespective of the legal grounds involved, including any future or contingent claims from current or future contracts. This shall also apply in instances where payment is effected for specially designated claims.

2. Insofar as Terramapsver claims reservation of title, this shall only apply as rescission of the contract if it is explicitly declared in writing as such by Terramapsver. The client's right to own the goods under

reservation shall expire if he or she fails to fulfil his or her obligations stipulated in the basic contract with Terramapserver.

### VIII. Warranty

1. If Terramapserver's suppliers assume warranty with regard to the client, any assumption of warranty by Terramapserver shall be excluded.

2. Terramapserver assumes no warranty for the following: a) that, in the case of aerial photographs, the territory of the Federal Republic of Germany or the area requested by the client is fully covered; b) that the geobased information (maps, data, aerial photographs) has been fully surveyed, c) that the specified year for obtaining the geobased information is applicable in each individual instance, or d) that the purpose intended by the client with the requested service can be achieved.

3. In the case of offline delivery, the time when the items are handed over to the forwarding agency or carrier is decisive for the contractual condition of the items involved, at the latest the time when the items leave the supplier or the stores.

4. Following the discovery of any defects, Terramapserver shall be immediately notified in writing about such defects, including the absence of warranted properties, and work shall be discontinued at once. Any complaints about apparent defects shall be excluded after the expiry of 14 days following receipt of the items / data at their point of destination.

5. After the client has effected acceptance as agreed, Terramapserver can no longer be notified about any defects which may have been established during the agreed acceptance procedure.

**6. In the event of any justified immediate complaints about defects, Terramapserver will, where possible, take back the defective supplies or services and, instead, supply fault-free items or perform fault-free services. Taking the client's interests into reasonable consideration, Terramapserver is also entitled to replace or remedy the item involved.**

**7. If Terramapserver fails to comply with or does not contractually adhere to its obligation regarding substitute delivery or remedial action, the client, by his or her choice, is only entitled to reduce remuneration or rescind the contract.**

### IX. Liability

1. The service description of the licensed geobased information and declaration of the licensed purpose of usage do not involve any warranted properties of the items involved. If Terramapserver explicitly warrants certain product properties, it will assume liability for their absence, irrespective of the question of responsibility. Terramapserver only assumes liability for consequential damages relating to defects if such damages are covered by the purpose of the warranted properties.

2. Terramapserver assumes no warranty that usage of the licence does not encroach on third parties' property rights or copyrights. This shall not apply in instances in which Terramapserver is aware of third parties' adverse rights or unaware of such rights as a result of gross negligence.

3. Terramapserver only assumes liability for damages to the client's legally owned property in the event of intent or gross negligence. This shall also apply to damages incurred by Terramapserver's servants, agents and employees. Liability is restricted to direct typical damages and a typical scope of damage which are reasonably foreseeable for Terramapserver with regard to the usage of its services. In the case of negligence in individual instances, the maximum liability amount shall be ten times the respective transaction value (net) but no more than € 25,000.00.

3. In the case of slight negligence, Terramapserver shall only be liable if major contractual obligations are infringed by Terramapserver or its servants, agents and employees. In this case too, liability for damages shall be restricted to foreseeable typical damages, and the maximum liability amount shall, in individual instances, also be ten times the respective transaction value (net) but no more than € 25,000.00.

4. Terramapserver assumes no liability for the contents of third-party providers' web sites to which Terramaps-

erver may be linked or otherwise provide the client with access. Terramapsver only assumes liability for third-party contents which are provided on its own servers if it is familiar with the contents involved. Terramapsver is not compelled to be familiar with these contents. Terramapsver is not obliged to exercise any surveillance. Liability is restricted to technically feasible and reasonable action.

5. The client is aware that, in general, all Internet users have the possibility of gaining knowledge about data being transmitted without any authorisation. The client shall accept this risk.

6. Terramapsver assumes liability for the client's lost data if Terramapsver or its servants, agents or employees is responsible for such lost data through either gross negligence or intent and if the client has ensured by at least daily data back-up that the data can be reconstructed with reasonable effort.

#### **X. Applicable Legislation and Place of Jurisdiction**

1. German legislation shall apply, excluding the UN Convention on Contracts for the International Sales of Goods.

2. The place of performance and, in the case of dealers, the place of jurisdiction shall be Dortmund.

These General Terms and Conditions have been drawn up by Fraenkel's Law Office, Gütersloh, Germany. ([www.kanzlei-fraenkel.de](http://www.kanzlei-fraenkel.de))