

# General Terms And Conditions

These GTCs apply to the services (SaaS services and other services, "service") of Echometer GmbH ("Echometer") that are provided to customers via my.echometerapp.com. GTCs or other purchasing terms of customers do not apply unless Echometer explicitly agrees to their validity. With its services and general terms and conditions, Echometer is directed exclusively at companies within the meaning of § 14 BGB (German Civil Code).

## §1 Service

- (1) Echometer is an online tool for steering a continuous improvement process in agile teams and companies. By providing regular feedback on specific questions, teams can quickly identify the most important development areas and initiate an iterative improvement process by reflecting on the results in guided retrospectives.
- (2) In addition to the online tool, Echometer offers services, such as workshops or consulting services, in connection with the use of Echometer. If a customer wishes, for example, individual support in the use of Echometer (e.g. through coaching, moderation and consulting services), this is possible through an individual agreement on service content and remuneration. In this case, the time and effort will be invoiced on the basis of the man-days incurred. In these cases, the order is placed as an order for the provision of services. Success is not owed.

## §2 Remuneration

- (1) Each remuneration is understood to be plus value added tax at the statutory rate at the time and place of performance of the service.
- (2) Invoices are due upon receipt by the customer and are payable without deductions within thirty calendar days to the bank account specified in the invoice.
  - (a) The provision fee is to be paid in advance for the term of the contract with a payment term of 30 days.
  - (b) Additional licence fees, as well as remuneration for individual developments or consulting services, will be invoiced separately on a monthly basis.
- (3) Invoices are sent to the customer only electronically via email as a PDF.
- (4) Echometer reserves the right to adjust its prices in the future in order to meet the quality requirements of its customers in a cost-covering manner. Price adjustments will be announced at least 4 weeks in advance. If a customer is in an annual subscription at the time of the time adjustment, the new price is only valid for the next contract year. If the customer objects to a price adjustment, Echometer has the right

to terminate the contract with the customer on the next possible date of termination for exceptional reasons.

- (5) Additional consulting services beyond the provisioning of the software are generally charged on a time and material basis.
- (6) Depending on the subscription model, the payment is based on the number of users or the number of teams.
  - (a) For team-based remuneration, a team licence is charged for all teams in the customer's Echometer Workspace. Teams that have been archived for the entire billing period are excluded.
  - (b) For user-based remuneration, one user licence is charged for all individuals identified by their unique email address in the customer's Echometer Workspace. Users that have not been a member of any team during the billing period are excluded.

### **§3 Support and further services subject to remuneration**

- (1) Echometer offers its support services by contacting you by email (email address: support@echometer.de) and the chat tool of the Echometer website.
- (2) Echometer will generally respond to support requests within 48 hours. A claim in the sense of a "Service Level Agreement" does not exist under these GTCs, but can be agreed separately as a contractual service subject to a charge.
- (3) If a customer reports software bugs to Echometer, Echometer will remedy them free of charge. Bug reports are prioritised and processed according to capacity.
- (4) If a customer wishes a special prioritised handling of his error messages or requirements for the scope of functions, this can be agreed upon individually by separate agreement and remuneration.

### **§4 Duration & Termination**

- (1) When the termination of the contract takes effect, Echometer reserves the right to immediately block access to its services for the customer and its users. On request, the customer can have the contents processed with Echometer's services exported up to two months after the termination takes effect. After this period, Echometer reserves the right to completely delete the customer's access. Support services in connection with the termination will only be provided by Echometer upon request and, if necessary, against separate remuneration.
- (2) The right to extraordinary termination of this contract for good cause remains unaffected. A good cause shall be deemed to exist for Echometer in particular if a cloud provider as upstream supplier discontinues or terminates the provision of the services required for the provision of the service in relation to Echometer with the

consequence that Echometer is unable or unreasonable to comply with the regular period of notice.

## **§5 Changes in services and regulations**

- (1) Should Echometer change these GTC during the duration of the contractual relationship with a customer, Echometer will notify the customer accordingly. If the customer does not object to the validity of the new GTC within 2 weeks after this notification, the new GTC shall become effective. In case of an objection, the old GTC shall continue to apply. In this case, however, Echometer has the right to terminate the contract with a notice period of 4 weeks and, in case of an annual subscription, to credit the remuneration proportionally.
- (2) Echometer reserves the right to change its services (services, software, support services, apps, etc.) as well as the documents and attachments related thereto (such as service description, service level, pricing model) at its own reasonable discretion, taking into account your interests, to reduce or discontinue the scope of functions.
- (3) The software is generally optimised for the latest versions of modern browsers such as Mozilla Firefox, Apple Safari, Google Chrome, or Opera. There is no claim to the provision of services with certain functionalities for certain combinations of operating systems (e.g. Windows, Mac OS), end devices and browsers.
- (4) Echometer will inform its customers about significant changes & settings in text form at least four weeks before they come into effect. Customers have the right to object to the change. If the customer objects to the change, both contracting parties have the right to terminate the contract extraordinarily.

## **§6 Maintenance & warranty for defects**

In the event of material defects and defects of title in the case of purchase, rental and work services, the statutory provisions shall apply subject to the provisions of this section.

### **(1) Defects in quality**

- (a) In the case of defects in quality, the customer shall first be entitled, at Echometer's discretion, to rectification of the defect free of charge or new delivery (hereinafter "subsequent fulfilment") within 2 weeks.
- (b) In the case of rental, the strict liability for compensation for damages for defects existing at the time of transfer is excluded from § 536a para. 1 BGB. The customer's obligations as a merchant under §§ 377, 381 para. 2 HGB (German Commercial Code) remain unaffected.

### **(2) Defects of title**

- (a) Echometer's services are provided to customers free of third-party rights. Customers must inform Echometer immediately in text form if they become aware of third-party rights to Echometer's services.
- (b) If Echometer's services are actually encumbered with the rights of third parties after inspection, Echometer shall be entitled at its discretion to
  - eliminate the rights of third parties or their assertion (e.g. by payment of licence fees), or
  - to change the services in such a way that the rights of third parties are no longer violated.

### **(3) General**

- (a) If a defect cannot be remedied after two attempts at subsequent fulfillment, it must be checked before any termination or withdrawal whether the interests of the customer can be met by an alternative solution offered by Echometer.
- (b) Warranty claims are void if you have made changes to the services or had them made by a third party without Echometer's prior consent or if the services are used by customers for a purpose not covered by this contract and the change or use contrary to contract is solely responsible for the occurrence of the defect.
- (c) Claims due to defects are subject to a limitation period of 12 months.

## **§7 Liability**

- (1) In the case of simple negligence, liability is limited to the foreseeable damage typical for the contract. Apart from the violation of essential contractual obligations, liability for the compensation of indirect property damage and financial losses, in particular loss of profit, is completely excluded in the case of simple negligence. In the case of force majeure and the use of Echometers Services free of charge, Echometers' liability for simple negligence is completely excluded.
- (2) The parties shall be liable without limitation in terms of amount in the event of injury to life, body or health and in the event of wilful or fraudulent conduct. The same applies in the case of a written guarantee for the quality or durability of a service to be provided by Echometer.
- (3) Echometer's liability according to the product liability law remains unaffected.
- (4) Customers are responsible for the actions of their employees, legal representatives, vicarious agents and any other users of Echometers services as for their own actions.
- (5) Both parties to the contract agree that twice the annual remuneration paid by you corresponds to the foreseeable, typically occurring damage. The aforementioned limitation of liability does not apply to damages resulting from injury to life, body or

health, if Echometer has fraudulently concealed a defect or exceptionally assumed a quality agreement, or in case of intentional or grossly negligent action, as well as for claims under the Product Liability Act.

## **§8 General**

- (1) Echometer continuously improves its service. Customers should therefore be aware that the appearance and functionality of the service changes over time. This change may mean that functionalities are extended or changed or may be dropped.
- (2) The interoperability of the services provided by Echometer with your IT system or other hardware and software used by the customer is basically not an owed condition of the service.
- (3) Echometer is not responsible for the operability and availability of software, hardware or other components and services that customers themselves maintain or have obtained from third parties. Illustrations, drawings as well as other materials in connection with Echometer's services (hereinafter referred to as "product information") serve exclusively for general presentation. They do not constitute a guarantee.
- (4) For the services, SaaS solutions are subject to the provisions of tenancy law. Echometer is therefore obliged to maintain. Echometer carries out updates and other maintenance measures free of charge for customers, subject to the above-mentioned provisions on remuneration. The costs of further support services will be regulated individually if necessary. In addition to the maintenance measures, the statutory warranty law for rental defects applies.
- (5) Echometer may purchase essential inputs for Echometers Services from external cloud providers. If the cloud providers make changes that would lead to a change in service, Echometer will try to offer customers alternative, comparable services. If no agreement is reached, both parties have the right to terminate this contract without notice for good cause.
- (6) In the event of force majeure, Echometer is released from its obligation to provide the services. Force majeure is considered to be fire, explosion, flood, war, mutiny, blockade, embargo and industrial action for which Echometer or a subcontractor is not responsible.
- (7) Echometer guarantees 98% availability of the service (calculated on a calendar month). Echometer will carry out maintenance work outside normal business hours (weekdays 08:00 - 17:00, Berlin time zone) if possible. Echometer is not responsible for any disruption of availability in the sphere of the customer.
- (8) The customer agrees to use the interfaces offered by Echometer exclusively to a reasonable extent and for their intended purpose. Echometer reserves the right to block access to the interfaces offered by Echometer on the basis of user accounts and/or IP addresses if there are indications of misuse of the interfaces or of a danger

to Echometer's systems. Customers further agree to keep their access data confidential and not to share them with third parties.

- (9) The customer confirms that all account-related data provided by them (especially email, name, billing address and other payment data) are correct and complete. If the data provided should change after registration, the customer is obliged to change the information in his account immediately by himself.
- (10) The customer must note that Echometer can register, deactivate and delete accounts. If Echometer has an indication that a customer is using his account contrary to the provisions of these GTC, against Echometer's terms of use or in an illegal manner, Echometer may deactivate or delete the account without prior notice.
- (11) The customer agrees that Echometer may use the trade name or trademark of the customer as a reference in its marketing and sales documents, unless otherwise requested by the customer in text form.
- (12) The user is solely responsible for the contents provided by users within the scope of using Echometers Services.
- (13) When using Echometers services, customers are prohibited to:
  - violate the property rights of third parties such as trademarks, copyrights and rights to a name,
  - post insulting, slanderous, pornographic, youth endangering or otherwise criminally relevant content,
  - harass other customers and/or third parties unreasonably, for example through unsolicited advertising (spam) as well as offensive or sexually oriented communication,
  - use mechanisms, software and/or scripts within Echometers Services that go beyond the functionalities and interfaces provided with Echometers Services, in particular if Echometers Services are blocked, modified, copied or overwritten by this, as well as
  - attempt to access Echometer Services, their security systems or the contents available there by altering data (§ 303a StGB, German Criminal Code), computer sabotage (§ 303b StGB), falsification of evidentially relevant data (§ 269, 270 StGB), suppression of evidentially relevant data (§ 274 StGB), computer fraud (§ 263a StGB), spying on data (§ 202a StGB), interception of data (§ 202b StGB) or other criminal offences, whereby Echometer will report such attempts to the responsible public prosecutor's office.
- (14) Unless a customer has concluded an individual Data Processing Agreement with Echometer, Echometer's Standard Data Processing Agreement shall apply to the data processing. See <https://echometerapp.com/en/gdpr-and-security/>

## **§9 Obligation of the customer to cooperate**

- (1) Customers must ensure that all requirements for the contractual provision of Echometer's services are met in good time in their area of responsibility. The following provisions and cooperation are to be provided free of charge to Echometer, in particular by customers as ancillary service obligations:
  - (a) Provision of information, documents and data necessary for the provision of services in a format suitable for further processing or, if applicable, in the format agreed with customers.
  - (b) Reports of material and legal defects as well as malfunctions must contain a description of the problem (e.g. with screenshots, anonymised log files) including a priority assignment.
  - (c) In the case of security-relevant updates, Echometer reserves the right to adapt its services at short notice. Any resulting adjustments to the customer's IT systems must be carried out independently by the customer. If necessary, Echometer will provide its customers with support in this respect, depending on the scope of the necessary support, if necessary against payment.
- (2) If a customer is in default with the acceptance of services or if you violate your obligations under this section, Echometer is entitled, after the unsuccessful expiry of a reasonable grace period, to charge Echometer for the actual expenditure incurred by Echometer for the provision of resources and the rescheduling of these or other resources that may be necessary at Echometer. This shall not apply if the customer is not responsible for the delays.

## **§10 Customer responsibility**

- (1) Since Echometer only provides the technical and organizational platform for the use of its services, the contents posted by the customer and its users are external to Echometer. For the processing of these contents with Echometer's services, the customer grants Echometer the rights of use that are necessary for Echometer to provide the agreed services. If the customer processes text, image, graphic, audio or video files with Echometers Services, the customer must ensure that he is entitled to the necessary rights of use.
- (2) The customer is responsible for the actions of the users and is liable for these as for his own actions. Customers must inform their users about their rights and obligations before using Echometers Services for the first time and obligate them to any terms of use applicable to Echometers Services.
- (3) Via links or functionalities of the service, the customer can access external websites and SaaS solutions that are not operated by Echometer and for which Echometer is not responsible. Such links or functionalities are either clearly marked or can be

recognized by a change in the address line of the browser or a change in the user interface.

- (4) If the customer violates this contract, Echometer may impose sanctions (in particular deactivation or blocking of individual services, deletion of contents processed with the services and complete or partial blocking of access to the service) at its own reasonable discretion, taking into account the interests of the customer. The severity of the sanctions depends on the seriousness of the violation. Other claims remain unaffected, in particular Echometer's right to extraordinary termination for good cause.

## **§11 Customer's rights of use**

### **(1) Software usage & general**

- (a) Customers are granted a simple, non-exclusive right to use the Service, including new releases, for the duration of the contract and without territorial restrictions.
- (b) Group companies of the customer are entitled to use the software within the scope of the selected subscription variants. This does not constitute an independent authority to sublicense or otherwise transfer your rights of use. This right of use shall end if the group company meets the requirements of an affiliated company within the meaning of §§ 15 et seq. AktG (German Stock Corporation Act) no longer exists for the group company.
- (c) The customer is not entitled to exhibit, publicly display, in particular to make publicly accessible, edit, redesign, translate, decompile or otherwise alter the software. Their rights from §§ 69d para. 3, 69e UrhG (German Copyright Act) remain unaffected.
- (d) Echometer is always entitled to use its services, including new releases, as well as general empirical knowledge, methods and procedures otherwise developed in connection with the contract for other purposes (making them available to third parties, as open source software, etc.).

### **(2) Open Source Software**

- (a) "Open Source Software" ("OSS") means computer programs and material associated therewith (e.g. documentation or licence terms), (i) which are generally passed on to third parties without separate remuneration, (ii) which may be processed by any users under restrictive conditions, and (iii) which is regularly disclosed to third parties in source code. If open source software is included in Echometer's software, Echometer grants its customers those rights to it that can be transferred to the customer according to the licence conditions applicable to the customer.



- (b) This paragraph applies accordingly to the use of open source software in connection with the commissioning and use of Echometer's software. Customers are permitted to use open source software, provided that they ensure that Echometer's rights to the software are not impaired by the rights of third parties due to a so-called "viral effect" of the open source software.

## **§12 Free version**

- (1) Echometer offers free versions (hereinafter also referred to as "Free Plan" or "Free Echometer Workspace") in addition to the paid versions. The Free Plan has limitations in functionality or scope of use compared to the paid versions, e.g. in the number of teams, users or retrospectives and surveys.
- (2) Echometer reserves the right to adjust the limitations of the Free Plan. In the case of these adjustments, users of the "Free Plan" have no claim to retain the previous scope of functions. Echometer will make every effort to provide early notice and, if necessary, a transition period in the event of adjustments.
- (3) If multiple free Echometer workspaces are used in parallel within an organisation, Echometer may contact the administrators of those workspaces to discuss merging the workspaces or switching to a paid version of Echometer. If no agreement is foreseeable after contact, Echometer reserves the right to restrict access to the organisation's workspaces until further notice.

## **§13 Transfer to third parties**

- (4) Echometer is entitled to transfer the contract to a legal successor or a group company affiliated with Echometer without the customer's consent. The customer will be informed of this in text form at least two months before the planned transfer.
- (5) A transfer of the contract to a third party requires the prior consent of the customer. In the event of an objection, the contract will continue unchanged. The objection shall be deemed to be an important reason for Echometer to terminate the contract without notice.

## **§14 Confidentiality**

Both parties undertake to treat the information exchanged within the framework of the joint business relationship as confidential and not to disclose it to third parties. This obligation shall apply for the duration of the contractual relationship and for 3 years thereafter. The obligation of secrecy does not apply to such information which is already known to the other party at the time of the conclusion of the contract or which becomes known during the term of the contract by third parties or other circumstances.

## **§15 Legislation & jurisdiction**

- (1) German law shall apply to the exclusion of the conflict of laws provisions; Art. 3 para. 3, para. 4 ROM I-VO (European law) shall remain unaffected.
- (2) The parties undertake to conduct mediation in accordance with the DIS Mediation Rules 10 in the event of disputes arising from the entire contractual relationship.
- (3) An action is only admissible if a hearing has taken place within the framework of the mediation or if more than 60 days have elapsed since the request for mediation.
- (4) The place of jurisdiction for all disputes arising from the entire contractual relationship between the parties and from these General Terms and Conditions is Münster.

**Please note:** This translation of the GTC's is provided for the Customer's convenience only. The original German version of these GTC's shall be legally binding on the Parties.