

## General Terms & Conditions

### 1. Scope of application and validity

**1.1** Using these GTC, Client may order managed or cloud services, consulting, audit, project, maintenance, and other services ("Services"), and third-party machine or software ("Products") available from eb-Qual SA ("eb-Qual").

**1.2** Details regarding Services and Products are provided in contracts, schedules, orders and quotes ("Orders"). These GTC and applicable Order are the complete agreement ("Agreement") regarding transactions under this Agreement.

### 2. Services

**2.1** Services are provided on Client's site or remotely. Client shall provide access to its sites and to its IT equipment to eb-Qual personnel for the Services' purposes. Each party shall ensure timely and adequate collaboration with the other party.

**2.2** Orders define hourly rates and the number of hours.

**2.3** Except when installed on Client premises, a product is provided as Cloud Service. Cloud Services are hosted by a third-party and managed by eb-Qual. Client shall comply with access rights and instructions that eb-Qual may reasonably request. Client is responsible for use of Cloud Services and for anyone accessing the Cloud Services including content with Client's account credentials. Cloud Services are designed to protect the proprietary content that Client inputs. eb-Qual's access to Client's proprietary content is limited to eb-Qual employees and contractors as needed to deliver the Cloud Services and eb-Qual shall not disclose Client's content. eb-Qual shall return or destroy content upon termination of the Cloud Services, or earlier upon Client's request. The Cloud Services include a set of security items, and eb-Qual shall provide Client notice of any unauthorized third-party access to Client's content of which eb-Qual becomes aware and shall use reasonable efforts to remediate identified security vulnerabilities.

### 3. Products

**3.1** Products that are delivered on client premises are non-eb-Qual manufactured machines or editor software, procured for Client's acquisition or use on Client premises. eb-Qual transfers title to machines to Client upon full payment.

**3.2** The terms and conditions from the original manufacturer or editor apply to Products, and such prevail over these general terms & conditions. By placing or accepting an Order for any Product, the Client declares accepting such terms and conditions.

### 4. Charges, Taxes and Payments

**4.1** Client shall pay all applicable charges including charges for use in excess of authorizations, any customs, tax, or fee imposed by any authority under this Agreement, and in case of late payment, a reminder fee of CHF 40.-, increased by an annual late payment fee of 7 %, prorated from the invoice date until the effective received payment date.

**4.2** Client shall also pay for eb-Quals' reasonably incurred expenses when related to providing the Services (e.g., travel costs, work time outside normal business hours, parking, etc.). Delivery costs outside Switzerland for Products are due in addition.

**4.3** All amounts are due upon receipt of the invoice and payable within 30 days of the invoice date. Amounts for: i) recurring charges are due in advance, and ii) Products are due at delivery. Unless otherwise stated in the Order, amounts are mentioned in Swiss francs (CHF). They also exclude applicable VAT and recycling fees, which are added on the invoice. Prepaid Services must be used within 24 months following signature. eb-Qual does not refund prepaid, one-time charges, or other charges already due or paid.

**4.4** eb-Qual reserves its rights to adjust recurring charges for all its clients. Any such adjustment will not apply retroactively but shall always apply for the next renewal period.

## 5. Intellectual Property

**5.1** eb-Qual will own the copyright in works of authorship under an Order. Pre-existing or separately developed works are not transferred, whether from Client or eb-Qual. General available software by an editor are pre-existing works which are subject to a separate license agreement. Subject to full payment, eb-Qual grants Client an irrevocable, nonexclusive, worldwide license to use, execute, and prepare derivatives of pre-existing works (outside of pre-existing works under license), within its enterprise.

**5.2** Client grants eb-Qual an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, sublicense, distribute, and prepare derivative works of pre-existing works during the Agreement period.

## 6. Warranties

**6.1** eb-Qual warrants that it provides Services using reasonable care and skill in accordance with the applicable Order. eb-Qual does not provide any further warranties whatsoever for services and for products. However, any Product warranties and its related indemnities a software editor or a machine manufacturer may provide are forwarded to the Client for his direct benefit toward such software editor or machine manufacturer and in no circumstances, shall any warranties or indemnities apply to eb-Qual.

**6.2** Delivery lead-time is provided by the manufacturer, without eb-Qual guaranteeing it.

**6.3** eb-Qual does not warrant uninterrupted or error-free operation of a Service or that eb-Qual will correct all defects or prevent third party disruptions or unauthorized third-party access to a Service. These are the sole warranties that eb-Qual provides and replace all other warranties, including implied warranties (including those of the Code of Obligations) or noninfringement, and fitness for a particular purpose. eb-Qual warranties will not apply if there has been misuse, modification, damage not caused by eb-Qual, failure to comply with instructions provided by eb-Qual, the manufacturer or the editor.

## 7. Liability

**7.1** eb-Qual's entire liability for all claims related to the Agreement will not exceed the amount of any actual direct damages incurred by Client up to the amounts paid (if recurring charges, up to 12 months' charges apply) for the product or service that is the subject of the claim, regardless of the basis of the claim. This limit applies collectively to eb-Qual, its contractors, and suppliers. eb-Qual will not be liable for special, incidental, exemplary, indirect, or economic consequential damages, or lost profits, business, value, revenue, goodwill, or anticipated savings.

**7.2** eb-Qual has no responsibility for claims based on items not provided by eb-Qual, on Products, or any violation of law or third-party rights whether caused by Client's content or materials or not.

## 8. Duration and Termination

**8.1** For Services, the duration shall be stated in the Order. For Products, once an Order is placed, such Order is noncancellable.

**8.2** eb-Qual may suspend, revoke or limit Client's use of a Managed or Cloud Service if eb-Qual determines there is a material breach of Client's obligations, a security breach, or violation of law. Charges will continue to accrue during any suspension. If the cause of the suspension can reasonably be remedied, eb-Qual shall provide notice of the actions Client must take to reinstate the Service. If Client fails to take such actions within a reasonable time, eb-Qual may terminate the Services.

**8.3** Either party may terminate the Agreement immediately for cause if the other is in material breach of the Agreement, provided the one who is not complying is given notice and reasonable time to comply. Any terms that by their nature extend beyond the Agreement termination remain in effect until fulfilled and apply to successors and assignees.

## 9. Confidentiality

**9.1** If a separate confidentiality agreement has been signed between the parties, such is incorporated into and subject to this Agreement. Where no confidentiality agreement is signed, the following confidentiality terms apply: Each party will keep in strict confidence any confidential

information transmitted by the other party. Confidential information means that information, which i) is designated by the divulging party as confidential, or ii) is confidential by its nature, or iii) the receiving party knows or ought to know as being a confidential information.

**9.2** However, when information is or became public (without breach of the receiving party), such information is not confidential anymore. The period of confidentiality is of 3 years from the time of divulgation.

## **10. Data Protection**

**10.1** The eb-Qual Privacy policy applies. Such, as well as the GTC, can be found at the following internet address: [www.eb-Qual.ch](http://www.eb-Qual.ch). Some Product editors may have special arrangements that overrule our Privacy policy with regards to personal data, such can be found under their specific terms and conditions.

## **11. Applicable law and place of jurisdiction**

**11.1** Each party is responsible for complying with laws and regulations applicable to its business and content, import, export, economic sanctions, and transfer of data restriction.

**11.2** Both parties agree to the application of the laws of Switzerland to this Agreement, without regard to conflict of law principles. All rights, duties, and obligations are settled by the competent court of the defendant.

**11.3** If any provision of the Agreement is invalid or unenforceable, the remaining provisions remain in full force and effect. Nothing in the Agreement affects statutory rights that cannot be waived or limited by contract. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.

## **12. General**

**12.1** Since this Agreement may apply to many future Orders or renewals, eb-Qual reserves the right to modify it by providing Client at least two months' written notice. Changes will not apply retroactively; they will apply, however, to new Orders and renewals.

**12.2** eb-Qual may use personnel and resources in other locations and third-party suppliers to support the delivery of Services.

**12.3** Client is responsible for its use of Services and Products and is responsible for obtaining all necessary permissions to use, provide, store and process Client's content in Cloud or other Services, and grants eb-Qual permission to do the same.

**12.4** During the Agreement period and for an additional twelve months thereafter, Client shall not solicit nor to offer, whether directly or indirectly, employment to any eb-Qual personnel. In the event Client breaches this obligation, Client shall pay, immediately on demand, the equivalent of twelve months' gross income of the involved personnel.

**12.5** Both parties are independent companies, and each party is responsible for determining the assignment of its own personnel and contractors, and for their direction, control, and compensation.

**12.6** Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other. Assignment of eb-Qual rights to receive payments or in conjunction with the sale of its activity do not necessitate consent by Client.

**12.7** Any notice must be in writing and sent to the address on the Order unless a party designates in writing a different address. The Agreement supersedes any course of discussions between the parties. If there is a conflict, an Order prevails over the terms of these general business conditions.

**12.8** No right or cause of action for any third party is created by this Agreement or any transaction under it. Neither party is responsible for failure to fulfil its non-monetary obligations due to causes beyond its control. Each party shall allow the other reasonable opportunity to comply before it claims the other has not met its obligations. Where approval, acceptance, consent, access, cooperation, or similar action by either party is required, such action shall not be unreasonably delayed or withheld.

Date of entry into force: January 1, 2022