

Terms and conditions of delivery governing deliveries and services provided by wetter.com GmbH for the “METEONOMIQS Weather Tag for Google Analytics”

As at: 30 September 2021

1. Contractual basis

- 1.1. These standard terms and conditions of delivery (the “**terms and conditions of delivery**”) apply to the contracts concluded via the website www.meteonomiqs.com/de/ (the “**website**”) between yourself (hereinafter “**you**” or the “**subscriber**”) and us, the company wetter.com GmbH, Reichenaustr. 19a, D-78467 Konstanz (hereinafter “**we/us**” or “**wetter.com**”) unless expressly agreed otherwise in written agreements between the subscriber and wetter.com.
- 1.2. These terms and conditions of delivery cover the supply of meteorological data to the subscriber by wetter.com for the “METEONOMIQS Weather Tag for Google Analytics” project.
- 1.3. These terms and conditions of delivery shall apply exclusively. Terms and conditions of the subscriber that conflict with or deviate from these terms and conditions of delivery are hereby expressly rejected. These terms and conditions of delivery shall also apply if wetter.com GmbH provides its services while being aware of conflicting or deviating terms and conditions of the subscriber. Any other general terms and conditions of business, including those included in the subscriber’s order, shall only apply if agreed in writing by the parties.
- 1.4. Our website is intended exclusively for entrepreneurs within the meaning of Section 14 of the German Civil Code (BGB). Before concluding a contract, therefore, wetter.com requires the subscriber to provide it with adequate proof of their status as an entrepreneur, specifically by indicating their VAT ID no. during the order process or, in exceptional cases and at the discretion of wetter.com, by furnishing other suitable evidence. The subscriber must provide the information required to establish this proof truthfully and in full.

2. Conclusion of the contract, contract language

- 2.1. You can order the various service packages (also referred to as “**service specifications**”) on our website without needing to sign up.
- 2.2. Rather than a legally binding offer, the presentation of the service packages on our website merely serves as an invitation to place an order (invitatio ad offerendum –invitation to treat/bargain).
- 2.3. By clicking on the “Jetzt Testen” (“Test Now”) button in the final stage of the ordering process, you make a binding offer to purchase the service packages shown in the order overview. As soon as you have submitted your order, you will receive an order confirmation; however, this does not yet constitute acceptance of your contract offer. A contract between you and us will be concluded once we accept your order and/or booking by means of a separate email containing the access data (“API key”) for using the service or, as appropriate, when we start providing our service. Please check the spam folder of your email inbox regularly.
- 2.4. The first month after the API key has been provided is a free trial period, after which the paid-for contract begins. According to clause 11, you can cancel by e-mail at any time within the trial period or cancel monthly thereafter.

- 2.5. The contract may only be concluded in German. Translations into other languages are for your information only. In the event of discrepancies between the German text and the translation, the German text shall take precedence.

3. Technical steps for concluding the contract and providing services

- 3.1. The first step in the order process is to select your desired service package. If you have chosen your desired service package via “Jetzt Testen” (“Test Now”), you will be taken to a form page on which you can enter your details. When you click on the “Senden” (“Send”) button, we are sent these details and you will then receive an order confirmation. A second email will provide you with the API key that you will need in order to use the product.

If you would like to cancel the ordering process completely, you can also simply close your browser window. Otherwise, your declaration will become binding within the meaning of Section 2.3 of these terms and conditions of delivery after you click on the “Jetzt Testen” (“Test Now”) confirmation button.

- 3.2. The METEONOMIQS Weather Tag is integrated independently by the customer. To this end, you will need to integrate the METEONOMIQS Weather Tag in your Google Tag Manager account as a “third-party tag”. Activating the tag will mean that the METEONOMIQS Weather Tag will be continuously retrieved from your web tracking via API calls.

For integration purposes, wetter.com provides the link to the tag in the Template Gallery, the API access token to the data service and an integration guide.

4. Services provided by wetter.com GmbH

- 4.1. The meteorological data to be supplied by wetter.com GmbH in accordance with the service package agreed on an individual basis with the customer (the “**meteorological data**”) shall be delivered to the subscriber in individual transmissions.
- 4.2. Unless agreed otherwise in the service specifications, the transmission of meteorological data shall begin on the first working day of a month.
- 4.3. wetter.com GmbH shall provide the meteorological data at a defined transmission time. wetter.com GmbH shall be responsible for ensuring an orderly flow of data up until this transmission time. The transmission method, transmission time and transmission frequency shall be determined on an individual basis for the respective customer in the service specifications.

5. Payment terms

- 5.1. The fees to be paid by the subscriber are calculated based on the service specifications. The subscriber is only entitled to exercise a right of set-off or retention in the case of uncontested claims or those established with legal effect.
- 5.2. All prices are net and exclude statutory VAT.
- 5.3. Fees shall fall due monthly at the start of the billing period specified in the service specifications and shall be invoiced monthly in the middle of the month. Payments are to be made in full within 14 days of invoicing. If the subscriber defaults on their payments, wetter.com GmbH shall be entitled to demand interest at a rate of eight percentage points above the relevant base rate. Any bank charges incurred shall be paid by the subscriber. The right to assert further claims for loss or damage caused by the default shall remain reserved.

6. Rights of use

- 6.1. When it transmits the meteorological data, wetter.com GmbH grants the subscriber a personal, temporary, non-exclusive, non-transferable and non-sublicensable right to use it solely for the media/platforms listed in the service specifications (e.g. online, radio, print or TV).
- 6.2. With the exception of the rights granted within the scope of Section 4.1, ownership and all rights such as industrial property rights, copyrights, related rights and other IP rights and other forms of intellectual property arising in connection with the provision of the services shall be retained exclusively by wetter.com GmbH.

7. Damages

If the provisions of Section 6 (Rights of use) of these terms and conditions of delivery are infringed, wetter.com GmbH shall reserve the right to assert claims for damages in the amount of its lost remuneration. In this event, wetter.com GmbH shall also be entitled to terminate the contract without notice in accordance with Section 11.3.

8. Material defects and defects of title

- 8.1. The subscriber's rights in respect of material defects and defects of title involving the meteorological data shall be based on the following provisions unless determined otherwise by Section 9 (Third-party property rights) and Section 10 (Liability).
- 8.2. Insofar as the meteorological data (i) exhibits a fundamentally different quality to that agreed in the contract or (ii) infringes third-party property rights, it shall be deemed defective (hereinafter: the "**defect**"). If the intended use of the meteorological data is only impaired marginally in a single respect, this shall not be regarded as being fundamentally different.
- 8.3. In the event of a defect, wetter.com GmbH shall be obliged to remedy it by way of subsequent performance at its own cost within a reasonable period of time by choosing either to rectify the defect or resupply the service.
- 8.4. Insofar as wetter.com GmbH is unable to remedy the defect within a reasonable period of time, the subscriber shall be entitled either to withdraw from the corresponding individual delivery of meteorological data or to grant wetter.com GmbH a final reasonable deadline for its subsequent performance. If this final deadline passes without a successful result, wetter.com GmbH shall be entitled to decline to effect subsequent performance.
- 8.5. The subscriber's rights in respect of defects shall be limited to twelve months after transmission of the meteorological data. The subscriber shall not be entitled to reduce the level of fees to be paid.
- 8.6. The subscriber shall not have the rights described in Sections 8.3 and 8.4 (Material defects and defects of title) insofar as the defect was caused by a modification or misuse of the meteorological data by the subscriber.

9. Third-party property rights

Should a third party accuse the subscriber of infringing copyright or intellectual property rights through use of the meteorological data, the subscriber shall be obliged to notify wetter.com GmbH immediately. wetter.com GmbH shall indemnify the subscriber against justified third-party claims during the limitation period for defects of title within the scope of the limitation of liability agreed in Section 10 (Liability).

10. Liability

- 10.1. The subscriber's claims for damages or compensation for wasted work/expenditure shall be determined in accordance with this clause, irrespective of the legal nature of the claim.
- 10.2. wetter.com GmbH shall be liable without limitation for the absence of a guaranteed quality, for loss or damage resulting from injury to life, limb or health due to an intentional or negligent breach of duty, or for any other damage or loss due to an intentional or grossly negligent breach of duty.
- 10.3. wetter.com GmbH shall only be liable for slight negligence insofar as a material contractual obligation (i.e. a contractual obligation whose non-fulfilment would jeopardise the purpose intended by the parties with the relevant delivery) is breached. If such a material contractual obligation is breached, liability shall be limited to damage or loss that, at the time the contract is concluded, must typically be expected to occur in the context of data transmission.
- 10.4. The subscriber is obliged to make back-up copies to a reasonable extent. A breach of this obligation shall be considered contributory negligence under the contract.
- 10.5. The parties agree that liability for computer viruses – except in the event of intentional or grossly negligent conduct in accordance with Section 10.2 (Liability) – shall be excluded with respect to transmission of the meteorological data to the subscriber by electronic or other means, unless wetter.com GmbH, applying reasonable effort, could have detected and removed the computer viruses causing the damage in its final test prior to transmission.
- 10.6. The above provisions shall also apply in favour of the executive bodies and other employees of wetter.com GmbH, with the limitation of liability also applicable to the executive bodies' personal liability.
- 10.7. Liability under the German Product Liability Act (Produkthaftungsgesetz – ProdHG; Section 14 ProdHG) and other mandatory statutory provisions shall remain unaffected.

11. Contract term and termination

- 11.1. After the end of the month-long trial period and unless otherwise agreed in writing in the service specifications, the contract shall run for a term of one month and shall be extended automatically for a further month in each case unless it is terminated in accordance with this Section 11 (Termination).
- 11.2. The contract may be terminated by the subscriber and by wetter.com GmbH in writing at the end of the respective term with one month's notice, unless otherwise agreed in writing in the service specifications.
- 11.3. If the subscriber repeatedly breaches their obligations as stipulated in Section 6 (Rights of use) of the terms of delivery despite being warned not to, wetter.com GmbH shall be entitled to terminate the contract with immediate effect. The subscriber shall have the same right if wetter.com GmbH repeatedly and culpably breaches its own performance obligations.
- 11.4. Any notice of termination must be given in writing.

12. Changes to services

Changes to the scope of services can be agreed in writing by mutual consent at any time.

In all other respects, the notice periods for termination in accordance with Section 11 (Contract term and termination) shall apply.

13. Place of performance

Insofar as permitted by law, the place of performance shall be Konstanz.

14. Place of jurisdiction and applicable law

Insofar as the subscriber is a merchant within the meaning of the German Commercial Code (Handelsgesetzbuch – HGB), the place of jurisdiction shall be Konstanz. However, wetter.com GmbH shall be entitled to take legal action against the subscriber in any other statutory place of jurisdiction. The provisions of German law shall apply, excluding the United Nations Convention on Contracts for the International Sale of Goods.

15. Reporting obligation

The subscriber is obliged to report any change of address and any modification to the data required for transmission.

16. Data protection

The data required to manage the subscription shall be stored in compliance with all applicable data protection laws. If and insofar as wetter.com GmbH is obliged to collect, process or use personal data on behalf of the subscriber on the basis of this contract, wetter.com GmbH and the subscriber shall conclude a data processing agreement based on a template provided by wetter.com GmbH.

17. Miscellaneous provisions

- 17.1. Any amendments or addenda to these terms and conditions of delivery must be made in writing in order to be valid. This also applies to any amendments to this clause.
- 17.2. Should a provision of these terms and conditions of delivery be or become ineffective or unenforceable, or should these terms and conditions be found to contain a loophole, this shall not affect the effectiveness or enforceability of the remaining provisions of these terms and conditions of delivery. In order to replace the relevant ineffective provision or close the loophole, the parties shall be obliged to agree an effective provision that comes as close as possible to the commercial purpose intended by these terms and conditions of delivery.