

## General Terms and Conditions of etracker GmbH

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## 1 Area of Validity

These General Terms and Conditions apply to all contracts and business transactions of etracker GmbH, Erste Brunnenstrasse 1, 20459 Hamburg, Germany (hereinafter referred to as "etracker") and to its customers in relation to the use of etracker products and services which etracker offers its customers. For individual services like software development, consulting and training, the separately included General Contractual Terms (GCT) apply to the individual services of etracker. The GTC and GCT apply to contractors in the most recent included version and for future contracts between etracker and the customer, even if they are no longer mentioned in later contracts, commissions or services.

Conflicting or deviating conditions and contract offers from the customer are hereby rejected by etracker. Regulations deviating from these General Terms and Conditions only become components of the contract if this is expressly agreed on with etracker within the framework of an individual agreement between the two parties.

etracker offers a variety of services. Supplementary terms and conditions and licence arrangements can apply for individual offers, which may take priority over the regulations in these General Terms and Conditions.

## 2 Definitions

The following definitions apply in regard to these General Terms and Conditions:

- **etracker accounts:** These are the virtual access accounts of customers for the respective contractual relationship. Billing, allocation of services & contract model as well as the customer's personal settings are performed using the etracker account.
- **etracker services:** The entirety of services or products provided by etracker within the framework of its contractual relationship in accordance with the service description applicable to the respective service.
- **Registration:** The electronic registration or order from the customer for the respective contractual relationship.
- **Tracking code:** A piece of code ("Snippet") or SDK which is integrated into the website or app of the customer and using which required information for the etracker products and services can be collected and other services provided.
- **etracker software:** The software provided to the customer by etracker for use as part of the contractual relationship (regardless if the service is within the framework of the "Software-as-a-Service" or as an On-Premise solution). The tracking code is a component of etracker software.
- **Customer:** Contractors or consumers with whom etracker has a business relationship.
- **Personal data:** Individual information on persons or material relationships of an identifiable or identified natural person.
- **Contractor:** Individuals or legal entities or legal business partnerships who practice their commercial or independent professional activities upon completion of a legal transaction.

- **Consumers:** Natural persons who enter into business relationships with etracker without it being possible to allocate any commercial or independent professional activity to them.

## 3 Contractual Conclusion

### 3.1 Terms of the Contract

etracker's offers are subject to change. Subject matters of the contract are products and services of etracker as offered according to their respective description at the time of registration of the customer.

### 3.2 Contract Conclusion Steps

Upon registration, the customer declares him/herself bound to using the etracker services and/or the etracker software (contract offer of the customer). The contract offer of the customer is transmitted to etracker, if he/she has specified his contract data in the context of the registration and confirms the registration by clicking on the button "book for a fee".

If a customer registers him/herself online, etracker will inform the customer that the registration or order has been logged. The confirmation of this receipt does not represent any binding acceptance of the registration or order. The confirmation of receipt can however be connected with the acceptance declaration.

The contract between the customer and etracker comes into being when etracker accepts the customer's contractual offer or when the customer receives the login data. etracker is not obligated to accept contractual offers. When making an additional booking via the etracker account, the contract on such additional services is concluded upon confirmation by etracker or upon provision of the booked service within five work days of the request for the provision of the service by the customer.

The customer can correct entry errors made during registration by pressing the Back button and then changing the relevant information. The contractual language is German.

The contract text is not stored by us and can no longer be opened after completion of the order process. The customer can print these terms and conditions and the data of his booking / order before sending and receives a contract confirmation in accordance with the statutory provisions.

### 3.3 Registration Data

The customer is obliged to provide true information when registering and to keep this data up to date at all times. If this data is or becomes invalid over the duration of the contract, the customer is to immediately update or correct this in their etracker account. Contract-relevant communications are usually done via email. The customer is responsible for ensuring that the email address provided by him in his master data is accurate and that he sets up his systems and email inbox in such a way that he can receive contract-related messages from etracker.

### 3.4 Contractual Service

etracker is obligated to provide the respective contractual service in accordance with the currently valid service description.

etracker is entitled to make changes and adjustments to its service offer, provided that the contractual performance for the customer is not affected by this. This also includes in particular improvements to the software and enhancements of the functionality as well as adaptations to the current standards of technology. In addition, etracker is entitled to adapt the contractual services in accordance with the respectively applicable legal requirements as well as to adapt to the current standards of technology and to the applicable requirements and standards of data protection and data security. etracker's services are, unless otherwise stated in the respective service description, to be available a maximum of 99% of the year. In the event of unforeseeable circumstances, etracker is entitled to interrupt

etracker services for the purpose of maintenance or repair, insofar as this is necessary for the stable and secure operation of the service. A guarantee in the legal sense is only available from etracker in the form of a guarantee agreement made in writing using the term "guarantee". Achieving economic or advertising success which goes beyond the agreed contractual performance is not part of our service.

## 4 Prices and Payment Terms

### 4.1 Prices

The prices for the services used by the customer arise from the respective order forms / offers and from the respectively valid price lists as presented on the etracker website (<https://www.etracker.com/en/>). etracker accepts the payment methods shown in the customer's etracker account or in the order process. etracker is entitled to refuse certain payment methods in individual cases, provided that etracker has a legitimate interest in doing so. Payment by check requires individual prior agreement with etracker.

### 4.2 Billing

Billing the customer is done in electronic form, unless otherwise agreed with the customer. Sending the bill is done exclusively via email to address the customer provided.

### 4.3 Payment Due Date and Delay

Current fees are payable in advance for the respective service period without any deductions. Usage-based fees are billed monthly after service provision. The customer receives bills for usage-based fees (as far as they are calculated by etracker) by email for the preceding calendar month. Invoice amounts are due upon billing and payable within 14 days. The non-use of the contractual services by the customer does not exempt him from his obligation to pay for current charges.

In the event of late payment, etracker is entitled to block the receipt of further services, in particular access to the etracker services, from the point of notification until the outstanding claims have been fully settled at the expense of the customer. The customer remains obligated to pay the current invoices while blocked.

After setting a reasonable deadline etracker is entitled to terminate the contract extraordinarily if no payment is made.

For returned direct debits and unpaid checks, the customer must reimburse etracker for the costs incurred to the extent that the customer is responsible for the event causing the costs.

Further claims and rights of etracker remain unaffected.

### 4.4 Offsetting

The customer can only offset against claims of etracker with uncontradicted or legally established claims or with claims from the same contractual relationship. The customer is only authorised to exercise a right of retention insofar as the counterclaim is based on the same contractual relationship. These limitations on offsetting and retention rights do not apply to counterclaims of the customer in the context of exercising the statutory right of withdrawal.

### 4.5 Objections

Objections to the invoice must be submitted within six weeks after receipt of the invoice to etracker (see address in paragraph 1) in text form (in writing or by email) to [billing@etracker.com](mailto:billing@etracker.com) or by fax to the telephone number +49 40 55 56 59 59. If the customer does not submit any objections within six weeks of receipt of the bill, the bill shall be deemed approved. etracker will specifically point out the consequences of failing to make a timely objection in the bills. Legal claims of the customer when submitting objections after the period has expired remain unaffected.

## 4.6 Upgrades / Switching Licences

Upgrading the products / licences offered by etracker is possible at all times. The customer can select a more extensive service package of the product used by him. A switch made in the etracker account of the customer is binding and is considered to be a renewed contract according to the respective conditions of the selected licence, in particular with the contract period for the new license, which begins with the switch to the new license. Unused usage fees from the old contract will be credited towards the fees of the new contract. A downgrade (choosing a less extensive service package) is not possible during an ongoing contract period.

## 5 etracker Software

On its website under <https://www.etracker.com/en/>, etracker has provided service descriptions, on the basis of which or on the basis of a possibly granted test phase, the customer can convince himself of the suitability and usefulness of the etracker services for his purposes and intentions.

The customer acknowledges that technical inaccuracies and deviations cannot be excluded in the analysis of the usage data according to the current state of technology.

Before integrating the etracker services and / or the installation of etracker software, the customer must make a backup copy of his data on the installation computer or server and on the website into which the etracker services are to be integrated. If, during or after integration of etracker services or during the installation of etracker software, the customer determines that an error occurs, he must immediately cancel or undo the installation.

## 6 Data Protection and Data Security

### 6.1 Data Protection

Data protection and data security play a particularly important role at etracker. Therefore, etracker processes personal data only insofar as this is necessary for the settlement of the contractual relationship between the customer and etracker, or that etracker is entitled to disclosure (e.g. when a company is named as a reference customer). Personal data will not be disclosed to third parties unless the disclosure is required for provision or billing (including collection of receivables) of the contractual services or there is a legal obligation to disclose. All employees of etracker are obliged by law to maintain data secrecy.

The customer is hereby informed in accordance with Article 13 of the EU General Data Protection Regulation (EU GDPR) that etracker stores and processes their complete address and other information made available to etracker over the course of the contractual relationship. For details about our handling of your personal data, please refer to the further information in our privacy policy: <https://www.etracker.com/en/data-privacy/>

The customer is prohibited to merge or otherwise use the data collected using etracker's services with the personal data of third parties, in particular usage data, for personal data analysis without the proper consent of the person concerned. The customer is responsible for the use of the etracker functions permissible in accordance with statutory data protection.

The customer will display where data is collected by etracker using etracker services in a prominent location on their website(s). This is done (as a minimum) by the data protection notice provided in the etracker account under "Settings", which must also contain a link to provide the option of a possible objection. Please only use the hyperlink provided in your etracker account as it is customised for the customer's website and other links are not functional.

If the customer also uses etracker services to collect personal data, he must clearly draw the visitors' attention to this and, if required by data protection law, obtain the consent of the person affected before the data is collected. The customer also has to ensure deletion of the data once the storage purpose discontinues.

## **6.2 Order Processing According to EU GDPR and German Federal Data Protection Act (new)**

According to the EU GDPR, certain contractual provisions must be observed for the processing of personal data on behalf of the customer ("order processing") in the European Union. The conclusion of a written or electronic agreement on order processing between etracker and the customer is therefore mandatory for the use of the etracker services.

## **6.3 Data Security**

etracker explicitly points out to the customer that the data protection and data security for data transmissions in open networks such as the Internet cannot be guaranteed according to the current standard of technology. Of course, etracker has taken all technical and organisational measures to protect etracker's personal data against misuse and unauthorised access. However, third parties may be technically able to gain illegal access to the network security and check the mail correspondence or monitor the data traffic, in particular with data transmission over the Internet outside the access area of etracker. The customer is therefore responsible for the security and back-up of data transmitted by the customer via the Internet or technically accessible from the Internet.

The customer is responsible for ensuring the regular and proper backup of the data which is important to him proportionate to the risk. etracker is not liable for the loss of data unless this was caused by gross negligence or intent on the part of etracker.

The customer shall ensure that its servers and PCs connected to etracker's services have up-to-date security measures (e.g. virus scanners with up-to-date virus signatures, firewalls) and that security updates to the operating software and applications of these computer systems are installed, provided this does not conflict with any legitimate interests of the customer. The customer is responsible for the proper and appropriate organisation of the data protection as well as for the legal data protection requirements applicable to him.

## **6.4 Prudence of the Customer**

User accounts are non-transferable and may not be used by third parties. The customer is obliged to prevent the unauthorised access of third parties to the etracker services by taking suitable precautions. Sensitive data such as, for example, user names and passwords, tokens for interfaces or data for direct access to evaluations (direct login URLs / bookmarks) are to be kept secret and in no case passed on to third parties. The customer must oblige employees, who have access to the passwords to the etracker services, in a demonstrable manner to secrecy. In case of misuse or suspicion of misuse, the affected customer will immediately change the existing password and inform etracker immediately of the abuse or suspected abuse by email to the address [privacy@etracker.com](mailto:privacy@etracker.com) or by fax to the telephone number +49 40 55 56 59 59 . If the use of the etracker services by third parties is possible due to a breach of confidentiality, the customer shall bear the damage resulting from the breach.

## **6.5 etracker Data Protection Signet**

The customer is entitled to integrate the etracker privacy signet into its website for the duration of the service period. This allows the customer to point out the privacy-compliant tracking using etracker vis-à-vis its website visitors, and at the same time creates trust among its visitors. Only the integration method provided in the etracker account of the customer under "Settings / Account / Privacy Signet" may be used. The signet is to be removed if the customer's website no longer fulfils the requirements, in particular if other tracking systems are also used which do not conform to the etracker data protection requirements.

## 7 Industrial Protection Rights

Upon conclusion of the contract, etracker grants the customer the non-exclusive, non-sub-licensable and non-transferable right of use to the contractual services of etracker limited to the duration of the contract, insofar as this is necessary for the use of the contractual services. The right of use expires if the customer defaults on a payment owed to etracker.

The customer may only use the data and evaluations obtained by the etracker services for their own use. The customer may not make the services of etracker available to third parties without the written consent of etracker.

A commercial exploitation of the analysis results for third parties is possible only on the basis of a separate agreement with etracker.

The customer is not permitted

- to change the etracker software or the documentation, to carry out translations, to allow tracing back to the source code, decompilation or disassembly work or to create works derived from it; Information according to Section 69 e of the German Copyright Law, which is required for the creation of the interoperability of independently developed computer programs with the software, can be acquired on request by etracker in return for payment at the respectively valid prices of etracker;
- to transfer, lend, rent, lease, distribute or use the services of etracker for the benefit of third parties or for third parties, grant rights to etracker software, documentation or other services of etracker in any form to third parties, unless etracker has previously given written consent to this, corresponding fees have been paid and all other terms of etracker have been fulfilled; or
- to remove, modify or make illegible the names, labels or markings relating to copyright and other intellectual property rights of the etracker software, documentation or other services provided by etracker.

Any HTML or other code (in particular the tracking code) made available to the customer by etracker must be used by the customer unchanged and as intended.

Insofar as etracker has technically protected the contractual products and / or services (e.g. with firewalls or security keys), the customer is not permitted to remove or circumvent the security precautions.

All rights to the etracker software and the etracker services remain with etracker and / or the suppliers and partners of etracker.

## 8 Further Rights and Obligations of the Customer

The customer creates the conditions necessary for the use of etracker services on their page(s) himself and at his own expense. This concerns in particular network connections (Internet connection), telecommunication connection, hard and software (in particular current and compatible browser technology) as well as adequately knowledgeable personnel. The integration and installation of the etracker services (in particular the integration of the tracking code into the website(s) of the customer) is carried out by the customer himself.

The customer is forbidden to perform report queries automatically via interfaces other than those approved by etracker for this purpose without special consent in text form from etracker, e.g. via scripts or "tools".

During the registration process business customers are to name an employee who is responsible and available at short notice during normal business hours (weekdays 10 am to 6 pm) to answer all questions relating to the cooperation with etracker.

etracker will send important messages to customers via the message function of their etracker account or via email. The customer is therefore obliged to check at regular intervals whether there are any messages for him in his etracker account or in his email account specified at the time of registration.

## 9 Defects

The customer must notify etracker of any defects immediately in text form and support etracker in the error analysis and troubleshooting by providing the most accurate error descriptions possible in an appropriate and reasonable manner. Legal claims of consumers remain unaffected.

## 10 Other Liability

### 10.1 etracker Liability

etracker is not liable for any interference, restrictions or impediments to performance nor for any interruptions or disruptions to the etracker services, which are results of circumstances beyond the responsibility of etracker.

etracker shall be liable for any damage (without limitation) caused by etracker as a result of its intent, gross negligence or breach of a material contractual obligation (cardinal obligation). Significant contractual obligations are those whose fulfilment is necessary to achieve the objective of the contract as well as those on the compliance of which the customer as contractor can regularly rely. Claims for damages (except claims for defects) from contractors, which are based on a simple negligent breach of duty by etracker become statute-barred one year after the occurrence of the damage. With minor negligence, etracker is liable without limitation in cases of injury to life, limb or health. If the culpable breach of a material contractual obligation is not caused by gross negligence or intent, the liability of etracker is limited to typical damages that were reasonably foreseeable at the time the contract was concluded. These damages are however limited to the maximum amount of the total annual compensation, which the customer was paying to etracker for the product which justified the liability at the time of the damage. The liability for all other damages is excluded, whereby the liability according to the regulations of German product liability law as well as for any assumed guarantees remains unaffected. The liability for any lost profits for commercial customers is excluded.

The aforementioned liability regulations also apply in the same way in favour of the organs, employees and agents of etracker and accordingly for claims for reimbursement of expenses.

### 10.2 Infringements by the Customer

The customer undertakes not to violate applicable laws or contractual provisions when using etracker's services. In particular, the customer will not violate any rights of third parties (e.g. personal rights, copyrights, industrial property rights (in particular trademark rights) or other rights).

The customer indemnifies etracker from damages caused by infringements of the law for which the customer is responsible. The indemnification also includes the costs of legal defence in an appropriate, but at most in the legally permissible extent, specifically in accordance with the German Federal Code of Lawyers' Fees (RVG) and the German Court Fees Act (GKG).



## 11 Term and Termination

The customer chooses a contract period (performance period) upon conclusion of the contract. The contract may be terminated by both parties with a notice period of four weeks to the end of the selected service period. If the contract is not terminated, the contract period at the end of each service period is automatically extended by the period of service chosen at the conclusion of the contract.

A form of payment different from the service period (for example, monthly) does not change the duration of the service period.

Termination can only be made via the etracker account of the customer or by declaration in text form.

The right to extraordinary termination for good cause remains unaffected. etracker is entitled to an extraordinary right of termination (in addition to other termination rights based on these terms and conditions) in particular if:

- the customer made false statements when registering or makes them during the contract period;
- after setting a deadline in the event of late payment the customer still has not made payment (see section 4.3);
- the customer modifies or otherwise manipulates the etracker software or other contractual services of etracker;
- the customer presents racist, pornographic, immoral or illegal content on their website or content which glorifies or trivialises violence;
- the customer breaches the industrial copyrights of etracker or of the contract partners of etracker;
- the customer more than negligibly violates the general terms and conditions or essential contractual obligations.

Prepaid fees will only be refunded in the event of an extraordinary termination for which etracker is responsible.

From the time the contract is terminated, etracker is entitled to irrevocably delete all data stored during the contract period.

By the end of the contract, the customer is no longer entitled to use the terminated services, in particular the etracker software. Any hardware and software provided must be immediately returned to etracker at the end of the contractual relationship. At the end of the contract, the customer is obliged to immediately delete the etracker software installed on his systems or third-party systems and to remove etracker's built-in code components (in particular the tracking code). If the customer does not remove the tracking code, he shall continue to pay etracker during the period in which the tracking code was not removed after the end of the contract in accordance with the remuneration provisions of the expired contract. etracker will inform the customer about this circumstance in writing as part of the termination confirmation.

## 12 Special Provisions for etracker Lite Products

The following provisions apply to the use of the etracker Lite products in the case of deviation from the above General Terms and Conditions:

### 12.1 Object of the Contract

The etracker Lite products will be provided to the customer free-of-charge.

### 12.2 Discontinuation and Modification

etracker reserves the right to discontinue, restrict the functionality or modify etracker Lite products at any time.

## 13 Dispute Resolution

The European Commission provides a platform for out-of-court online dispute resolution (OS platform), which is available at [www.ec.europa.eu/consumers/odr](http://www.ec.europa.eu/consumers/odr). In principle, we are not willing or obliged to participate in dispute resolution proceedings before a consumer arbitration board. However, we do endeavour to settle any disagreements arising from our contractual relationship in a consensual manner. Get in touch with us so that we can find a solution. Our email address is: [info@etracker.com](mailto:info@etracker.com).

## 14 Right of Withdrawal for Consumers

Consumers have a legal right of withdrawal:

### WITHDRAWAL POLICY

#### Right of withdrawal

You have the right to withdraw from this contract within fourteen days without giving any reason. The revocation period is fourteen days from the date of the conclusion of the contract.

In order to exercise your right of revocation, you must contact us, etracker GmbH, Erste Brunnenstrasse 1, 20459 Hamburg, Germany by phone: +49 40 55 56 59 50, Fax: +49 40 55 56 59 59, email: info@etracker.com, by means of a clear statement (e.g. a letter sent by post, fax or email) about your decision to withdraw from this contract. In this regard, you can use the Contract Withdrawal Form template, but this is not mandatory. In order to adhere to the cancellation period, it is sufficient for you to send the notification of the exercise of the right of withdrawal before the expiry of the withdrawal period

#### Consequences of Withdrawal from Contract

If you withdraw from this contract, we are obligated to return all payments we have received from you, including delivery charges (excluding additional costs arising from choosing a different delivery method than the best value standard delivery we offered) immediately and at the latest within fourteen days from the date on which the notification of your withdrawal from this contract has reached us. For this repayment, we will use the same means of payment as you used in the original transaction, unless expressly agreed otherwise with you; In no case will you be charged for these repayment fees. If you have requested that the services be commenced during the period of cancellation, you must pay us a reasonable amount. This amount should equal the share of services already provided by the time you inform us of the exercise of the right of withdrawal in respect to this contract compared to the total volume of services which were to be provided for in the contract.

#### End of Withdrawal

### Contract Withdrawal Form Template

If you wish to withdraw from the contract in accordance with the preceding paragraphs, then you can fill out this form and send it back to us. Using this particular form however is not mandatory.

To

etracker GmbH, Erste Brunnenstrasse 1, 20459 Hamburg, Fax: +49 40 55 56 59 59,

Email: info@etracker.com

I / we (\*) hereby withdraw from the contract signed by me / us (\*) relating to the purchase of the following goods (\*) / the provision of the following service (\*)

Ordered on (\*) / Received on (\*)

Name of the consumer(s)

Address of the consumer(s)

Signature of the consumer(s) (only with notification on paper)

Date

(\*) Delete as appropriate.

## 15 Final Provisions

For the interpretation of the content of the contract and the rights and obligations of the contracting parties, the German version of these General Terms and Conditions must always be used.

etracker is entitled to use third parties to fulfil the contractual obligations. etracker's responsibility remains unaffected by this.

The present Agreement shall be governed by German law. The terms of the UN purchasing contract are not applicable. This choice of law applies to consumers only insofar as the consumer is not deprived of the protection afforded by mandatory provisions of the law of the country of the consumer's habitual residence.

If the customer is a merchant, a legal entity under public law or a special fund under public law or if the customer has no general jurisdiction within the Federal Republic of Germany, Hamburg is the place of jurisdiction for all disputes arising from contractual relationships between the customer and etracker.

Any ineffectiveness of individual provisions of these General Terms and Conditions shall not affect the validity of their remaining provisions. In place of the ineffective points, if available, the statutory provisions apply. To the extent that this would constitute an unreasonable hardship for one of the contracting parties, the contract as a whole becomes ineffective.

Date: 1 April 2018