

#### **ARTICLE 1 APPLICABILITY OF TERMS AND CONDITIONS**

1. These terms and conditions shall apply to all business relationships between Drift & Noise and its clients regarding sea ice services or the sale and delivery of sea ice measurement readings and (representation, forecast and other) data (Sea Ice Consulting, Sea Ice Geophysics and Sea Ice Data Delivery, including the Open Data Portal).
2. Alternative, contrary, or supplementary terms and conditions of the client shall only become an integral part of an agreement to the extent that Drift & Noise expressly consents to their application in writing. The consent requirement shall apply in all cases, e.g. even if Drift & Noise provides services in the knowledge of the client's terms and conditions without any reservation and/or without objection.
3. Individual agreements entered into with the client in individual cases (including side agreements, supplements, and amendments) shall take precedence over these terms and conditions in all cases. Such individual agreements must be in written form and require the express written consent by Drift & Noise.
4. The issuance of a purchase order against Drift & Noise's offer shall constitute an acceptance of the order and not a counteroffer, and together with these terms and conditions shall create the Agreement. Commercial or technical provisions contained in the purchase order documents that materially modify, add to or change the provisions of the offer shall not be part of the Agreement unless expressly agreed by Drift & Noise in a written acknowledgment (for legal provisions see Section 2 above).

#### **ARTICLE 2 SERVICES BY DRIFT & NOISE**

1. Nature of the services. The data received, measured, used by Drift & Noise and/or provided to its clients may contain inaccurate or incomplete information due to the passage of time, changing circumstances, sources used and the nature of collecting comprehensive geographic data, any of which may lead to incorrect results.
2. Scope of the services. The specified scope of services is set forth in the order form/offer.
3. Drift & Noise itself is partly, and for the Open Data Portal, wholly reliant on data transfers from third parties to provide its services. Therefore, availability of the data as a prerequisite for providing services to others is subject to the condition (which constitutes a force majeure event (impossibility) and which does not constitute an event of default) that Drift & Noise itself receives the data from third parties. Drift & Noise does not provide any availability guarantee for any service or product.
4. Field work is highly dependent on weather conditions. At its sole discretion, Drift & Noise shall be entitled to postpone or reschedule any field work for safety reasons. Any such postponement or rescheduling shall not constitute a default.
5. To the extent necessary, Drift & Noise shall provide a contact person in case of technical questions. Drift & Noise shall name this technical contact person to the client directly after the signing of this Agreement and shall promptly inform the client if the technical contact person is changed. To the extent necessary, client shall also name a technical contact person directly after the signing of this Agreement and promptly notify Drift & Noise of any changes.
6. Drift & Noise shall have the right to modify or adapt the services if this is necessary or expedient to reflect technical progress and it does not restrict the services for the client provided by Drift & Noise.

#### **ARTICLE 3 FEES**

1. The fees as set forth in order form/offer apply. Unless otherwise stated in Drift & Noise's order form/offer, all fees are net fees stated in EUR. The fees do not include sales, use or excise taxes, import or export duties, special financing fees, value added taxes, income or royalty taxes, consular fees, special permits or licenses or similar charges.
2. All claims shall be due and payable in full without any deductions within 14 days of issuing the invoice. In the case of a default, late payment fees in the amount of 1.5% per month apply. Any reminder and collection costs are to the account of the client.
3. Client's failure to pay invoices when due shall be deemed to be a material default by client and Drift & Noise may elect to (i) discontinue performance and /or (ii) terminate the Agreement and/or (iii) pursue any other remedy available to Drift & Noise.
4. The agreed fees, if periodic, are subject to annual indexing based on the 2010 Consumer Price Index (CPI) published by Statistics Swiss CPI or an index replacing the CPI. The index number published in the month where this Agreement came into force shall serve as base value.

#### **ARTICLE 4 RIGHT OF USE**

1. Drift & Noise grants the client a non-exclusive and non-transferable, temporally limited to the term of this Agreement, geographically limited to the contract territory and substantively limited to the purpose of this Agreement, right to use the provided services (Data). Any additional use beyond these limitations, particularly the transfer to third parties of the rights of use that have been granted, and any change, adaptation and/or publication or disclosure of the Data, in whole or in part without the written consent of Drift & Noise are not permitted. Accordingly, but subject to the restrictions set forth in this Article, client may copy the Data only as necessary for the permitted use to (i) view it, and (ii) save it, provided that the client does not remove any copyright notices that appear and does not modify the Data in any way. Client agrees not to otherwise reproduce, copy, modify, decompile, disassemble, create any derivative works of, or reverse engineer any portion of the Data, and may not transfer or distribute it in any form, for any purpose, except to the extent permitted by mandatory laws.
2. The Data shall be used only for sustainable activities with socially acceptable purposes. The client warrants that the Data will not be used, directly or indirectly, to serve military purposes.
3. If the client violates the rights of use granted to him, Drift & Noise shall have the right to terminate this Agreement for cause. In addition, Drift & Noise shall be entitled to a penalty payment equal to 15% of the contract value with a minimum of EUR 10,000 (in words: ten thousand euro) for each individual violation under this Agreement. Drift & Noise reserves the right to take judicial and non-judicial action to be compensated for damage incurred (including damage based on claims by Drift & Noise suppliers and other third parties).

#### **ARTICLE 5 LIABILITY AND WARRANTY**

1. This Agreement does not establish rights of any kind in favor of end-customers of the client, or third parties. If such persons raise claims against Drift & Noise in connection with the services subject of this Agreement, on whatever legal ground, client shall indemnify Drift & Noise and hold it harmless against such claims.

2. Drift & Noise shall provide all services in accordance with the recognized rules of geophysical and remote sensing science and technology. Due to the numerous factors that influence the weather and the environment, actual sea ice conditions cannot be reliably represented or forecast in all cases. Likewise, it is not always possible to fully understand weather or environment conditions in retrospect. Rather, the services of Drift & Noise are representations or forecasts based on geophysical and remote sensing experience with certain probabilities. Deviations from actual sea ice conditions cannot be avoided.
3. The Data are provided to the client "as is," and the client agrees to use them at its own risk. Drift & Noise and its licensors (and their licensors and suppliers) make no guarantees, representations or warranties of any kind, express or implied, arising by law or otherwise, including but not limited to, content, quality, accuracy, completeness, effectiveness, reliability, fitness for a particular purpose, usefulness, use or results to be obtained from these Data, or that the Data or server will be uninterrupted or error-free.
4. Drift & Noise makes no warranty and/or assumes no liability of any kind for any failures, interruptions, omissions, faulty data transfers, or other disruptions or impairments of the channels of communication caused by technical difficulties (including necessary maintenance time) if and to the extent that this is not the responsibility of Drift & Noise (willful misconduct or gross negligence). With respect to the company hired for communications and data transfer purposes, Drift & Noise shall be responsible solely for the selection of the company.
5. Therefore, Drift & Noise assumes no liability of any kind in connection with any failure of the data to match the sea ice conditions actually occurring towards the client or affiliated third parties.
6. Drift & Noise explicitly advises that the provided information is not deemed as an official weather or environment warning. In case client requires or is obligated to receive an official warning, the service provided by Drift & Noise to the client may be not meet this requirement.
7. If and to the extent that Drift & Noise must rely on data from third parties to provide its services, Drift & Noise shall check the plausibility of this third party data in accordance with the recognized rules of geophysical and remote sensing science and technology. Drift & Noise assumes no further liability and/or makes no further warranty of any kind with respect to this data. The same applies to the (timely) availability of the third party data itself, as a prerequisite for providing information to others. With respect to the selection of the third party data supplier, Drift & Noise shall be responsible solely for the selection of the company.
8. To the maximum extent permitted by law, neither Drift & Noise nor client, nor their affiliates, subcontractors, agents and/or employees shall be liable for any loss of use, loss of profit, loss of data, loss of time, savings not realized, expenditures made in vain, loss of contracts with third parties, special, indirect, punitive, exemplary, incidental or consequential losses or damages of any nature, howsoever caused, and whether based on warranty, contract, tort (including negligence), strict liability or any other theory of the law, regardless of whether a party had advance notice of the potential of any such damages.
9. To the maximum extent permitted by law, the total liability of Drift & Noise, its affiliates, subcontractors, agents and/or employees arising out of the performance or nonperformance of the Agreement, and whether based on warranty, contract, tort (including negligence), strict liability or any other theory of the law, shall not exceed in aggregate a sum equal to (i) for flat fee products, one time the flat fee amount for the discrete service or service product involved, and (ii) in the case of agreements with recurring charges, the amount actually paid by the client for the services provided by Drift & Noise during the six months prior to the occurrence of the first claim or cause of action, or EUR 60,000 (sixty thousand euro), whichever is less.
10. The limitations of liability set forth in this Article 5 shall not apply in the case of willful misconduct and gross negligence.
11. The limitations of liability set forth in this Article 5 shall prevail over any conflicting or inconsistent provisions contained in any documents comprising the Agreement.
12. Client shall give Drift & Noise prompt notice of any disruption or defect of the provided services in writing or by e-mail, no later than ten days upon its awareness of the disruption or defect, or otherwise lose its right to raise warranty or damage claims. Client shall not institute any suit or action regarding the Agreement against Drift & Noise or any of its affiliates, subcontractors, agents and/or employees, unless filed within 1 (one) year of the event giving rise to the claim.

#### **ARTICLE 6 DURATION OF THE AGREEMENT**

1. The term of this Agreement is stated in the order form/offer.
2. Unless not agreed otherwise in the order form/offer, this Agreement shall renew for additional 12 months unless one of the parties gives the other party written notice of termination at least 6 months before the expiration of the Agreement.
3. Either party shall have the right to terminate the Agreement early if and to the extent there is cause that makes further collaboration seem unreasonable. There shall be cause, in particular, in the following cases:
  - if client violates Section 4 of these Terms and Conditions despite a warning;
  - if client does not meet its payment obligations despite being provided a reminder with a 14-day grace period;Irrespective of the examples of good cause set forth in Section 6.3, the parties agree that, even in cases that constitute "good cause" within the meaning of Section 6.3, the relevant contracting party shall be granted a grace period of 10 (ten) business days. The period shall begin to run when one contracting party gives the other contracting party written notice that it has good cause to terminate the Agreement. The foregoing applies exclusively to cause that is of such a legal nature that it can be rectified. The foregoing shall not affect any claims for compensatory damages.

#### **ARTICLE 7 DATA PROTECTION**

1. The personal data provided by the client in the framework of the contractual relationship, particularly the contact data (i.e. the telephone number, fax number and e-mail address), are processed by Drift & Noise for the purposes of provision and performance of the contractual services. Subject to revocation, the client hereby expressly agrees to receive (fax, e-mail and SMS) messages at any time with information from the contractual service, even if these messages contain advertisements from Drift & Noise and/or third parties that may not be companies in related industries, in addition to the information from the contractual service.
2. Further the client expressly consents to the use of the personal data he provides, particularly the contact information, by Drift & Noise for Drift & Noise's advertising and marketing purposes and for the advertising and marketing purposes of Drift & Noise's advertising partners. The client grants Drift & Noise express consent to transmit his personal data to its existing and future advertising partners for their advertising and marketing purposes. In particular, by providing his telephone number, fax number and/or e-mail address, the client expressly agrees to receive telephone calls, fax messages, and/or electronic mail

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(e-mail, SMS messages etc.) from Drift & Noise and its advertising partners for advertising and marketing purposes. This consent shall be valid during the agreed-upon term of this Agreement and can be revoked at any time. Any revocation and any change in personal data shall be e-mailed to [info@driftnoise.com](mailto:info@driftnoise.com).

3. Drift & Noise shall comply with mandatory data protection law, as amended, when directly applicable to Drift & Noise.

**ARTICLE 8 GOVERNING LAW AND JURISDICTION**

1. The Terms and Conditions are subject to Swiss law excluding its conflict-of-law rules and the provisions of the UN Convention on Contracts for the International Sale of Goods (CISG).
2. Drift & Noise and client shall use their best efforts to resolve any dispute or claim that may arise under the Agreement in an amicable manner. Except for Drift & Noise's claims for non-payment by client hereunder, in the event either party believes the other party is in breach of or is noncompliant with any of the provisions of the Agreement, such party shall promptly notify the other party in writing of such claim and the receiving party shall take reasonable measures to remedy such breach or noncompliance within 30 (thirty) days after receipt of notice. If the dispute is not resolved within such time, then the party initiating the claim shall demand a meeting of the parties, to be held promptly in Bremen (Germany), unless the parties agree otherwise. Persons attending such meetings shall have decision making authority regarding the dispute to attempt, in good faith, to negotiate a resolution of the dispute. The parties agree to participate in such negotiations and, if agreeable, mediation related thereto, for a period of 30 (thirty) days. If the parties are not successful in resolving the dispute during the negotiations, or mediation, if used, then the dispute shall be submitted to the Zurich (Switzerland) courts.

**ARTICLE 9 MISCELLANEOUS PROVISIONS**

1. The entire content of the order form/offer are confidential for both contracting parties. The parties shall procure that their respective employees/contractors, advisors and/or other third parties acting for the respective party will be bound this confidentiality obligation.
  2. Client shall have no right of set-off or retention right unless its counterclaims have been found to be valid by a court of law (in a final and non-appealable decision) or are uncontested or have been acknowledged by Drift & Noise.
  3. The parties shall not have the right to assign this Agreement or part of it without the express written consent of the other party.
  4. At all times while performing the Agreement, Drift & Noise shall be deemed to be an independent contractor and not an employee or agent of the client.
  5. This Agreement contains the entire agreement between the parties about its subject matter and any concluded previous understanding, agreement, representation or warranty, verbal or written, relating to that subject matter is replaced by this Agreement and has no further effect.
  6. Amendments or supplements to this Agreement must be in writing to be valid. This also applies to any deviation from the written form hereby agreed-upon, so that there can be no presumption of tacit deviation from this requirement for validity.
  7. If individual provisions of this Agreement or terms and conditions are or become invalid or unenforceable or the terms and conditions are deemed as incomplete, the other provisions of these terms and conditions shall be unaffected and shall remain valid and enforceable. Invalid or unenforceable provisions shall be interpreted and amended, by mutual consent, with valid and enforceable provisions that come closest to the intended economic outcome of the parties.
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