

General Terms and Conditions

1. Area of validity

The following General Terms and Conditions apply to the purchase of software licences sold by ebz. Any conflicting or differing terms and conditions of the customer will not be recognised by ebz.

2. Contracting parties

The contracting parties are energieberatungszentrum Süd Ingenieurgesellschaft mbH, represented by the managing director, Raimund Käser, graduate physicist, of Wasserstr. 26a, 68519 Viernheim, entered in the Commercial Register at Darmstadt district court under HRB 62114, and the customer.

3. Description of the service

3.1. The customer may purchase licences for computer programs to be used for various methods of calculation in the field of energy consulting from www.eversoftware.de or www.techcalc.net via download.

3.2. The programs can be selected by the customer online and are made available for the latter to download.

3.3. To be able to purchase the program licences, the customer must register on the homepage of ebz. Registration is free of charge.

3.4. The required program is selected by clicking on the relevant program on the ebz homepage. To download the program, the customer must click on the "Order" button and then the "Confirm" button. After clicking on the order button, all the information entered by the customer is displayed in a confirmation window, where it can be checked and amended.

3.5. The customer requires an activation code in order to open the programs. This can be requested by email or by sending the fax form provided at www.eversoftware.de or www.techcalc.net to the fax number stated on the form.

3.6. After requesting the activation code the customer will first receive an invoice for the licence fee. Upon receipt of the invoice amount at ebz the customer will receive the code for the unrestricted activation of the program by email, fax or post.

4. Conclusion of contract

The customer's order for the computer programs covered by the contract shall constitute an offer to ebz. This is accepted when the programs are transmitted. A contract to purchase the licences covered by the contract shall be brought about when data transmission commences. Once the download is complete, the customer will receive an automatically generated email summarising the details of the contract.

5. Rights of use

5.1. ebz grants the customer non-exclusive, non-transferable, non-sublicensable rights of use, unrestricted in territory and time, to the computer programs covered by the contract.

5.2. The customer may download the computer programs once to save them.

5.3. Any use over and above this shall not be permitted. Distribution of the computer programs covered by the contract or any copies thereof in return for

payment, secondary distribution or any other form of resale is expressly prohibited.

6. Price and payment

- 6.1. The fee for the licences is shown in the relevant online display and on fax order forms.
- 6.2. Payment shall be due immediately when the invoice is issued. Upon receipt of the invoice amount the customer will receive the code for the unrestricted activation of the program by email, fax or post.

7. Offsetting and right of retention

The customer shall not have the right to offset against ebz any receivables other than those that are not contested or have been declared final. The customer may only enforce rights of retention insofar as these are based on the same contractual relationship.

8. Duties of the customer

- 8.1. The customer is responsible for inputting his data correctly. He may not give his password to third parties and must keep it safe from access by third parties. If there is reason to believe that unauthorised persons have acquired knowledge of the password, the customer must change the password immediately. The password may only be saved in encrypted form in digital media.
- 8.2. The customer must ensure that any use of the ebz online service by minors is with the express agreement of ebz.
- 8.3. ebz will not be liable for damages that result from a breach of duty on the part of the customer and that could have been prevented by due observance of the duties.
- 8.4. The customer will himself be directly liable vis-à-vis third parties in the event of any infringement of the rights of the latter. In the event of justified claims by third parties on the grounds of such an infringement, the customer shall be obliged to indemnify ebz unless he demonstrates that he is not responsible for the breach of duty that may have caused the damage. If the customer realises, or must realise, that there is a threat of such an infringement, he shall be obliged to notify ebz of this immediately.

9. Liability of ebz

- 9.1. ebz will have unlimited liability in the event of wilful intent or gross negligence, claims under the terms of the German Product Liability Act, the absence of a warranted characteristic, fraudulent concealment of a defect and for damages arising from injury to life, limb or health.
- 9.2. ebz shall only be liable for damages caused by slight negligence that do not fall within the scope of the previous clause if a cardinal contractual duty has been breached. In this case liability shall be limited to the damage that would typically arise.
- 9.3. ebz shall only be liable for the loss of data under the conditions of, and within the scope of, 9.2. insofar as the customer has backed up his data at adequate intervals and in such a way as to ensure that they can be recovered at reasonable expense.
- 9.4. ebz shall be exempt from liability in all other cases. This shall apply in particular to losses of data and hardware malfunctions caused by the

incompatibility of existing components of the customer's PC with new hardware and software, or with hardware and software to be changed, and to system malfunctions that may arise as a result of existing faulty configurations.

9.5. Insofar as ebz has no, or limited, liability under the preceding provisions, this shall also apply to its employees, representatives and vicarious agents.

10. Other provisions

10.1. The contractual relationship shall be subject to German law to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

10.2. Should one of the provisions of the contract be or become invalid, the validity of the remaining provisions of the contract shall remain unaffected thereby.

11. Cancellation (only for consumers)

11.1. Right of cancellation

Insofar as you, as a customer, are a consumer, you have a right of cancellation as per the cancellation policy below.

Information on rights of cancellation

Right of cancellation

You may cancel your contractual statement in writing (e.g. letter, fax, email) within one month without stating a reason or – if the item is delivered to you before the expiry of this period – by returning the item. The period will begin after you receipt of this policy in writing but, in the case of supply of goods, not before the receipt of the goods by the recipient (in the case of repeat deliveries of similar goods not before receipt of the first part delivery), in the case of performance of services not before the conclusion of contract and not before the fulfilment of our duties to furnish information pursuant to Art. 246, § 2 in connection with § 1 para. 1 and 2 EGBGB (Introductory Law of the Civil Code) and our duties pursuant to § 312 e para. 1 p. 1 BGB (German Civil Code) in connection with Art. 246, § 3 EGBGB. Timely dispatch of the cancellation or the item will be sufficient for observance of the period of cancellation. Notice of cancellation must be sent to:

energieberatungszentrum Süd Ingenieurgesellschaft mbH

Wasserstr. 26a

68519 Viernheim

Fax: 0 62 04 / 705 404

Email: contact@everphysics.de

Consequences of cancellation

In the case of a valid cancellation, the services received by both parties are to be returned and, if applicable, any derived benefits (e.g. interest) restored. Should you not be able to return the service received to us in full or in part or can only do so in a worse condition, then you must pay compensation to us if required. In the case of performance of services, this may mean that you must fulfil the contractual payment obligations for the period up to cancellation. This will not apply in the case of surrender of items if the deterioration of the items is exclusively attributable to its being tested – as would have been possible in a shop for example. In addition to this, you may avoid the duty of compensation for deterioration that has arisen as a result of using the item in accordance with regulations if you do not use the item as your property and refrain from doing anything to decrease its value. Items that can be

shipped in parcel form are to be returned at our expense and risk. You must pay the costs of return if the goods supplied match those ordered and if the price of the item to be returned is not in excess of €40.00 or, if the price of the item is higher than this, if you have not yet effected counterperformance or a contractually agreed part payment. Otherwise return will be free of charge for you. Items that cannot be shipped in parcel form shall be collected from your premises. Obligations to refund payments must be fulfilled within 30 days. For you, this period will commence with the dispatch of your notice of cancellation or of the item and, for us, with the receipt of these.

Special note

In the case of the performance of services, your right to cancellation will lapse prematurely if the contract has been completely fulfilled by both parties at their express request before they have exercised their right to cancel.

End of the information on rights of cancellation

11.2. Exclusion of the right of cancellation

11.2.1. There will be no right of cancellation in the case of software supply if you have unsealed the supplied data carrier.

11.2.2. There will also be no right of cancellation in the case of a purchase of our software via download if our services are performed at one time at your instigation.