



COLOP e-mark Terms of Use

These terms of use regulate the contractual relationship between us, COLOP GmbH & Co KG, a limited liability company with its headquarters in Wels and its business address in 4600 Wels, Dr.-Arming-Str 5, registered with the commercial register at the regional court of Wels, registered number FN 491965 d (hereinafter: „**COLOP**“ or simply „**we**“) and our customers concerning the download, the installation and the use of the „COLOP e-mark App“ (hereinafter: the „**App**“). These terms of use are addressed to both, (i) customers with consumer attributes (consumers) according to the provisions of the Consumer Protection law (hereinafter: “**Consumer-Customers**”) and (ii) to customers without consumer attributes (hereinafter: “**Entrepreneur-Customers**”).

Attention: These terms of use do not only govern the legal relations concerning the use of the App, they also define the legal relations with regard to the use of our distributed COLOP e-mark stamp, a battery-powered mobile marking device based on inkjet technology, and supplement a possible pre-existing contractual relationship between the customer and COLOP, whereby the provisions of these terms of use are ranking prior any other contractual agreement.

I. Pre-contractual information requirements towards consumer-customers

First of all, we hereby comply with our pre-contractual information requirements in accordance with the provisions of Art. 6 of Directive 2011/83/EU and the paragraphs 4 and 7 of the Austrian Distance Selling Act (“**FAGG**”). The provisions of this article I only apply to Consumer-Customers.

Entrepreneur:

COLOP GmbH & Co KG

Dr.-Arming-Straße 5

4600 Wels

Registration number FN 491965d; Regional court of Wels

Tel.: +43 7242/66 104

Fax: +43 7242/46 664

E-Mail: emark@colop.com

UID: ATU25075502

Chamber: Austrian Economic Chamber

Trade License Area: Stamp manufacturing

The characteristics of the goods:

We offer the possibility to install our "COLOP e-mark App" on a PC with Windows operating system and via our web presence. The use of the App is only possible with our distributed COLOP e-mark stamp, a battery-powered mobile marking device based on inkjet technology, whereby the content to be printed is generated by the App and gets transferred from the App to the device.

Prices:

The customer is entitled to download the app free of charge if he correctly provides the login data of the COLOP e-mark stamp owned by the customer on the download page; the App



can however only be used in connection with the COLOP e-mark stamp to be acquired separately. Please note that the use of the App may lead to data transfer costs (charged by your telecommunication provider).

Duration and termination:

The contractual relationship concerning the use of the App is concluded for an undetermined period of time. The customer has the right to terminate the contractual relationship at any time without complying a period of notice. We are entitled to terminate the contractual relationship applying a two months' notice period. Furthermore, we are entitled to terminate the agreements without notice on good grounds, e.g. in the event of violating these terms of use.

Delivery and performance relationships:

The download of the app takes place via our web presence. The delivery of the app takes place immediately.

No Right of Withdrawal:

If the customer requires to start with the performance of the service, before the period of notice of 14 days according to § 11 FAGG ends, the right of withdrawal voids after having obtained proper legal instruction about these consequences of premature execution. The customer is hereby informed and expressly agrees that with the first use of the App the performance service by the entrepreneur is starting before expiry of the withdrawal period according to § 11 FAGG and thus is leading to the loss of the right of withdrawal according to § 18 FAGG.

Warranty:

In the case of provision of a defective service by the entrepreneur, the customer has the right to assert warranty claims within the scope of the statutory warranty provisions.

II. Terms of use

1. Scope

1.1 These terms of use regulate the contractual relationship between the customer and us. These terms of use are addressed to both, (i) customers with consumer attributes (consumers) according to the provisions of the Consumer Protection law (hereinafter: **"Consumer-Customers"**) and (ii) to customers without consumer attributes (hereinafter: **"Entrepreneur-Customers"**).

1.2 The customer agrees to these terms of use by installing and starting the App for the first time.

1.3 These terms of use apply to any and all contractual agreements entered into with Entrepreneur-Customers, from time to time in the future, even if not expressly referred to during the conclusion of a future contract.

2. Use of the App and the E-mark stamp



2.1 The customer is entitled to download the app free of charge if he correctly provides the login data of the COLOP e-mark stamp owned by the customer on the download page; the App can only be used with the COLOP e-mark stamp to be acquired separately. Please note that the use of the App may lead to data transfer costs (charged by your telecommunication provider).

2.2 The use of the App requires a successful installation on the mobile device, as well as the acceptance to the terms of use. By using the App, the customer confirms, that he or she has studied the included user manual accurately and comprehensively.

2.3 We hereby grant the customer the non-transferable and non-sublicensable right, limited in time to the term of the contractual relationship, to use the App in the current version (to be updated from time to time in our sole discretion) together with the other components in accordance with these terms of use. We will not disclose or transfer the source code of the App. COLOP is not obliged to further develop the provided App (no software maintenance obligation).

2.4 The App may contain open source software components; their assignment and use is free of charge and without extra charge to the agreed payment; it is regulated by the terms of use of the particular right holders.

2.5 The customer is not allowed to modify, copy, parse, reassemble, publish, recreate or reproduce the App. The customer is only permitted to use the App for his or her own purposes. Third parties are excluded from use.

2.6 It is only allowed to use the App with a COLOP e-mark marking device, a battery-powered mobile e-marking device based on inkjet technology (hereinafter: the "COLOP-Stamp" or just the "device") distributed by COLOP and lawfully acquired by customer, whereby the content to be printed is generated by the App and is transferred from the App to the device. The use of the app for other purposes is expressly prohibited. In particular, it is forbidden to use the App for other stamps or comparable devices from third parties (if any).

2.7 The customer undertakes to use the App as well as the COLOP-Stamp only in accordance with its applicable law and to observe the (intellectual) property rights of third parties. COLOP is not responsible for the content generated by the App and/or the content printed by the COLOP-Stamp. In particular, COLOP has neither the responsibility, nor the possibility to verify the customer generated content for compliance with (intellectual) property rights of third parties (e.g. trade mark rights or copyrights of third parties) and/or applicable legislation. The customer is solely responsible for its content generated by the App and/or content printed with the COLOP-Stamp and will indemnify (and hold harmless) COLOP as well as its corporate officers, employees and agents in case of breaching property rights of third parties and/or applicable legislation.

2.8 Any data communication between the COLOP-Stamp and the App occurs either via USB cable or encrypted WLAN connection. However, COLOP does not warrant for any particular transmission security. Any data transmission is being made on the customer's own risk.

2.9 The COLOP-Stamp shall only be used with consumable materials (e.g. cartridge) or wear- or spare parts that are authorised by COLOP. The App and the COLOP-Stamp can deny their



respective functionality if used in conjunction with unauthorized consumable materials or wear- or spare parts.

3. Support

3.1 We offer support for the App on the Website (https://emark.colop.com/en_eur/support/e-mark-e-mark-create) as well as via e-mail (emark@colop.com). Even though we will attempt for availability and content quality of the support, we explicitly do not assure availability and special content quality of the support. We are also entitled to discontinue the support or to refuse support in individual cases, whereby the customer is not entitled to any claims in this context.

4. Property rights of third parties

4.1 If claims are asserted against the customer by a third party arising on the grounds of (or in connection with) an alleged infringement, wherefore COLOP is responsible for, COLOP is liable towards the customer within the period of limitation that is referred in clause 5 as follows: COLOP has the choice to either obtain a right of use at her own expense concerning the services within a reasonable grace period or to change them in a way, that the respective property right is not violated any longer, but the performance remains the same. If that is not possible under reasonable conditions, the customer is entitled to the statutory termination rights as well as claims for damages in accordance with clause 5.

4.2 The obligations of COLOP mentioned in clause 4.1 do only arise if and insofar the customer informs COLOP immediately in writing of the claims asserted by the third party, does not concede the existence of an infringement and leaves any protective measures and settlement negotiations to the discretion of COLOP.

4.3 In case the customer stops the use in order to mitigate damages or for other important reasons, he or she is obliged to inform the third party, that the stop of use does not constitute an acknowledgment of an infringement of property rights.

4.4 Claims of the customer according to clause 4.1 are excluded, if and insofar as he or she is responsible for the infringement of property rights.

4.5 Furthermore, claims of the customer according to clause 4.1 are excluded, if and insofar as the infringement of property rights is caused by (a) special requirements or preferences of the customer, (b) by a type or mode of use not foreseeable by COLOP or (c) by the fact, that the goods or services are modified by the customer or used together with good and services, which have not been authorised by COLOP.

4.6 COLOP does not assume any liability for infringements of property rights caused by hard- or software components of third parties which have not been integrated by COLOP. In this context, the customer undertakes to indemnify (and hold harmless) COLOP against any claims of third parties.



5. Warranty and liability

5.1 The warranty period shall be (concerning the use of the App, as well as all contracts regarding the use or purchase of the stamp) twelve months from the delivery (performance). The previously mentioned period does also apply with respect to non-obvious defects, based on the assurance of special properties. This clause only applies to Entrepreneur-Customers.

5.2 With respect to any alleged defect (concerning the use of the App, as well as all contracts regarding the use or purchase of the stamp), the customer has to proof that the defect existed at the time of conveyance. Section 924 of the Austrian Civil Law Code shall be excluded. This clause only applies to Entrepreneur-Customers.

5.3 In order to maintain the claims according to § 377 sec. 2 Austrian Business Code, obviously recognizable defects of the COLOP-stamp must be reported within 5 working days after delivery, transfer or acceptance and hidden defects must be reported within 5 working days after their discovery. The customer is obliged to provide COLOP with all the information and documents necessary for the rectification of a defect. If a complaint of defect proved unjustified, COLOP is entitled to demand compensation from the customer for the expenses incurred. This clause only applies to Entrepreneur-Customers, but also for the delivery of intangible objects.

5.4 If a defect appears (or is discovered) within the warranty period, COLOP may choose to either deliver a substitute or correct the defect. If the delivery of the substitute or the correction of the defect fails within a reasonable period of time or is unacceptable, the contractual partner shall – in accordance with the statutory provisions – be entitled to lessen the purchase or to rescind from the contract. This clause only applies to Entrepreneur-Customers, but also for the delivery of intangible objects.

5.5 In the case of a merely insignificant reduction in the suitability for contractual use, there are no claims for defects in the contractual service. This clause only applies to Entrepreneur-Customers, but also concerning to all contracts regarding to the use or purchase of the stamp.

5.6 All and any warranty claims are (with regard to the use of the App, but also with regard to all contracts concerning the use or purchase of the stamp) excluded, if and insofar the defect is based on improper use, in particular the use of unauthorised consumable materials or wear- or spare parts, use of consumable materials after the expiry date has been reached, improper operation or handling with the hard- or software or an unauthorised change or handling of the hard- or software or lack of compatibility or performance of non-authorised third party hard- and/or software. In order to maintain warranty claims on consumable materials purchased from COLOP, the customer shall not to mix, blend, process or otherwise change them with materials of any other kind.

5.7 We accept no responsibility for defects caused by errors, failures or damages that are due to improper use or that could have been avoided by duly studying and observing the operating instructions, that are supplied with the stamp or that occur by an application outside of the application limits.



5.8 Entrepreneur-Customers must prove the fault of COLOP or her subsidiaries. Section 1298 of the Austrian General Civil Code is expressly excluded.

5.9 Any and all liability for damages, which might occur on the grounds of COLOP having provided wrong and/or incomplete information shall be excluded, if and insofar the customer cannot prove willful or gross negligence. This clause applies to consumer-customers as well as to entrepreneur-customers. The limitation of liability does not apply to loss or damage caused by injury to life, limb or health as well as in the event, that contrary mandatory legal regulations and essential contractual obligations are opposed.

5.10 The limitation periods of Section 1489 of the Austrian General Civil Code with respect to the use of the App, but also with respect to all contracts regarding the use or purchase of the stamp shall be shortened with respect to Entrepreneur-Customers with the effect, that claims for damages have to be asserted in court within the lesser of (a) six months from the point of time on which the aggrieved party became aware of the damage or (b) a period of three years running from the date the contract has been concluded.

5.11 With respect to Entrepreneur-Customers, any liability (with regard to the use of the App, but also with regard to all contracts concerning the use or purchase of the stamp) is, irrespective of the legal grounds (contract, tort, strict liability, ...) and as far as legally permissible, limited to the lower of the following amounts: (a) the amount actually covered by the applicable liability insurance or (b) the fair value of the stamp used by the customer. This limitation also applies with respect to damages of items that we have accepted for treatment. The liability limitation does not apply to loss or damage caused by injury to life, limb or health as well as in the event, that contrary mandatory legal regulations and essential contractual obligations are opposed.

5.12 With respect to Entrepreneur-Customers, any liability (with regard to the use of the App, but also with regard to all contracts concerning the use or purchase of the stamp) for a standstill in production, lost profits, loss of use, loss of contract or any other consequential damage shall be excluded.

5.13 The exclusion of liability also includes claims against our employees as well as our representatives and agents with respect to damages, which they cause to the customer without reference to a contract (such as claims in tort, for example).

5.14 If and insofar the customer may, with respect to any damages caused by us, claim payments from an insurance for damages that has been taken out by him/her or in his/her favor (e.g. liability insurance, full coverage, transportation, fire, interruption of operation and other), customer undertakes to make use of such insurance payment and our liability shall be limited to the disadvantages customer suffers by making use of this insurance (e.g. increased insurance premiums).

6. Links

The App may contain links to websites of third parties or other apps. COLOP is not responsible for and cannot control these external sites and apps. We are not liable for the linked contents and external offers.



7. Terms

7.1 The contractual relationship concerning the use of the App is concluded for an undetermined period of time. The customer has the right to terminate the contract at any time without compliance with a notice period.

7.2 We are entitled to terminate the contractual relationship applying a two months' notice period.

7.3 Furthermore, we are entitled to terminate the agreements without notice on good grounds, e.g. in the event of violating these terms of use.

8. Change of terms of use

8.1 We are entitled to change, adjust and modify these terms of use if such changes are necessary due to new laws, case law or for technical reasons.

8.2 The changes are communicated to the customer in the form chosen by the customer when he or she downloaded the app (by e-mail or SMS) two weeks in advance. Upon receipt of such a notification, the customer can object to such changes with a two weeks period. If no such objection has been duly made, the customer must accept any changed terms of use by clicking on a button when using the App the first time after the period has lapsed.

9. Protection of data privacy

9.1 COLOP is entitled to collect operating data recorded by the COLOP-Stamp, which contain no personal references (e.g. software versions, ink consumption, operating temperature, user frequency or mileage) by remote diagnosis. COLOP is furthermore entitled to use these data without limitation as well as to save and analyse them in compliance with the obligation of secrecy for their own business purposes.

9.2 In order to protect your personal data, we will observe the relevant data protection regulation and will oblige our agents to adhere to the principle of data secrecy.

9.3 We will collect, process and use any personal data provided to us (names, professional title, business addresses, business phone- and fax numbers as well as e-mail addresses from customer's employees) insofar and as long as it is necessary for the implementation of pre-contractual measures or execution or termination of the contractual relationship or if COLOP has an overriding legitimate interest in doing so. As far as it is necessary for the performance of the service to be rendered to us, we will make the abovementioned contact information accessible for other COLOP companies, that are established in the EU as well as the third party appointed in the particular contractual relationship. COLOP-companies in the aforementioned sense are affiliated companies of COLOP Stempelerzeugung Skopek Gesellschaft m.b.H. & Co. KG. The processing of personal data is based on Art 4 section 1 litera b and f of the General Data Protection Regulation.

9.4 Upon request, we will provide, as required by applicable law and free of charge, information to the customer and his or her employees. The customer and his employees have the right to demand the correction, deletion and/or limitation of the processing or the



transmission of personal data to third parties. In addition, the customer and his employees are entitled to file a complaint with the competent regulatory authority.

9.5 COLOP is the responsible authority for all question in regards to personal data as well as for the exercise of the rights described in clause 9.4 (see section I for contact details).

10. Final Provisions

10.1 Should any provision of these terms of use be or become in whole or in part invalid or unenforceable, this shall not affect the validity or enforceability of the remaining provisions. If an Entrepreneur-Customer is concerned, the invalid or unenforceable provision shall be deemed to be substituted by a valid or enforceable provision, which in its economic purpose comes as close as possible to the invalid or unenforceable provision.

10.2 The customer is obliged to notify us about changes of his or her e-mail address immediately.

10.3 Any contractual relationship between a customer and us shall be governed by Austrian law (without giving effect to its conflict of law rules and the Convention on the International Sale of goods). With respect to Consumer-Customers, this choice of law shall only be applicable insofar as the afforded protection is not deprived by obligatory provisions of the law of the state in which the consumer has its habitual place or residence.

10.4 The exclusive place of jurisdiction for any disputes arising from or in connection with the contractual relationship between the Entrepreneur-Customer and us is Wels, Austria.

11. Alternative dispute resolution

11.1 The EU commission provides a platform for online dispute resolution under the following link: <https://ec.europa.eu/consumers/odr>

11.2 This platform serves as a point of contact to settle the disputes out of online sales- or service contracts, concerning a consumer's involvement, extrajudicial.

11.3 COLOP is neither obligated nor willing to participate in a dispute settlement procedure with a consumer dispute resolution board.