

General Terms and Conditions of UBIMET Australia PTY Ltd regarding Portals

§ 1 Applicability

1. These General Terms and Conditions ("Terms and Conditions" or "Agreement") shall apply to all business relationships between UBIMET and its clients regarding the access to Portals, including its severe weather warnings function via e-mail or text message ("Services").
2. Alternative, contrary, or supplementary terms and conditions of the client shall only become an integral part of an agreement to the extent that UBIMET expressly consents to their application in writing. The consent requirement shall apply in all cases, e.g. even if UBIMET 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 based on a written agreement or a written confirmation by UBIMET.
4. Changes to the Terms and Conditions shall be announced to clients with which UBIMET has an ongoing business relationship by e-mail, some other written form or by posting them on the portal. The changes shall take effect one month after their announcement. Within this one-month period, clients have the right to object to the changes to the Terms and Conditions in writing. Otherwise, the announced changes shall become an integral part of the Agreement.

§ 2 Services by UBIMET

1. UBIMET provides meteorological information on an ongoing basis. The information contains data on the current weather and expected changes to the weather, particularly information about rain, storms and freezing rain. Additionally client may select to receive individual severe weather warnings transmitted via text message to a mobile phone number and/or e-mail address disclosed by the client and agreed with UBIMET.
2. The transmission of severe weather warnings is deemed as completed, in case the warning is consigned by UBIMET to the respective telecommunication operator or internet provider.
3. UBIMET 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 used by the client or if an alternative service is available that offer comparable and/or equivalent performance.
4. The webcams are from webcams.travel: the free webcam catalogue with more than 40.000 webcams worldwide.
5. The map service is provided by HERE. Regarding the use of the map service the terms of use (<https://legal.here.com/terms/serviceterms/gb>) and the privacy policy (<https://legal.here.com/privacy/policy/gb>) of HERE apply additionally. The map service may also include data from other third parties. More detailed information is available on: http://corporate.navteq.com/supplier_terms.html.

§ 3 Fees

1. The fees as agreed apply. UBIMET's claims shall be due and payable in full without any deductions within 14 days of production of a valid tax invoice by UBIMET. In case of default late payment fees apply in the amount of 12% p.a and in addition reminder and collection charges apply.
2. Any payment obligation referred to in this Agreement does not include any tax pursuant to the "A New Tax System (Goods and Services Tax) Act 1999" („GST"). If GST is imposed on any supply made by any party to another party under or in connection with this Agreement the consideration for that supply is increased by an amount equal to the amount of that consideration multiplied by the rate at which GST is imposed in respect of that supply. The supplier shall provide to the recipient a GST invoice as required by the relevant legislation. The recipient may deduct from any payment which may be payable under this Agreement any amount which it reasonably considers that it is required to deduct by law and will pay or remit those deductions to the appropriate government agency.
3. In case payment of the fees in instalments is agreed, the entire fee amount shall become due any payable in case of default of only one instalment.
4. On each CPI (Consumer Price Index – weighted average of eight capital cities published by the Australian Bureau of Statistics) Review Date (which means each and every annual anniversary of the date where the Agreement came into force) fees shall be automatically increased by multiplying the then-current fees by the Previous CPI (meaning the annual percentage change of CPI from the corresponding quarter in the previous year to the quarter ending immediately before the CPI Review Date) and adding the sum to the amount of fees payable by the client immediately prior to the relevant CPI Review Date.
5. UBIMET reserves the right to suspend delivery of Services in the event that any fees are unpaid.

§ 4 Right of Use

1. UBIMET grants the client a non-exclusive and non-transferable, royal-fee licence to use all information and data contained in the Services provided by UBIMET ("Data") limited for internal use during the term of the Agreement. Any additional use beyond these limitations, particularly the transfer to third parties of the rights of use that have been granted, and any alteration or additional of any kind or disclosure of the Data, in whole or in part without the written consent of UBIMET are not permitted.
2. Client shall immediately report to UBIMET any known infringement or potential infringement by the client and/or any third party or parties of UBIMET's right, title and/or interest in the Data and/or any other rights of UBIMET under this Agreement. Client shall do anything in the reasonable opinion of UBIMET to avoid what might constitute a breach of the right of use in this clause. If the client violates the rights of use granted to him, UBIMET shall have the right to terminate this Agreement for cause.
3. Client must maintain confidentiality with respect to the user ID and password provided by UBIMET to access the portal. In particular, the user may not make the user ID and password available to third parties and/or enable third parties to gain knowledge of them – even by accident.
4. If UBIMET suspects that the provided Services are being used for other than its intended purpose, UBIMET shall be entitled to suspend delivery of Services. The same shall apply in case of any other breach of the Terms and Conditions by the client. Client has the right to evidence that such breach has actually not occurred.

§ 5 Limitation of Liability and Indemnities

1. UBIMET gives no warranty as to the accuracy or completeness of the Data and UBIMET shall not be liable to the client for any claim in this regard.
2. Client acknowledges and agrees that:
 - a. the information contained in the Data may be inaccurate or incomplete;
 - b. Client is aware that there is no nationwide monitoring network capable of detecting storms at every location/point in Australia; and
 - c. that weather forecasting is not always accurate and that (i) some forecasted weather events may not occur in the manner predicted; and (ii) weather events may occur without being forecasted or predicted by UBIMET.
3. Client:
 - a. agrees that this Agreement does not protect or establish rights of any kind in favour of end-customers, or other contract partners of the client or any third parties;
 - b. indemnifies UBIMET against all claims, liability and/or damage arising directly or indirectly from any claims made against UBIMET by any third parties concerning the use or reliance on any information, data or Services provided by UBIMET including but not limited to legal costs calculated on a full indemnity basis;
 - c. warrants that he is authorised to disclose mobile phone numbers and/or e-mail addresses to UBIMET for severe weather warnings; and
 - d. indemnifies UBIMET from and against any claim, loss or damage suffered or sustained by UBIMET as a result of any breach of clause § 5.3.c above.
4. Client acknowledges and agrees that:
 - a. due to the numerous factors that influence the weather actual weather conditions cannot be reliably forecast in all cases;
 - b. it is not always possible to fully understand weather conditions in retrospect;
 - c. UBIMET's Services are forecasts based on experience with certain probabilities;
 - d. divergences from actual weather conditions cannot be avoided;
 - e. UBIMET's ability to perform the Services under this Agreement may be dependent on the provision of data from third parties which may be inaccurate, incomplete or unavailable; and
 - f. UBIMET assumes no liability of any kind in connection with any failure of the meteorological data to match the weather conditions actually occurring.
5. UBIMET 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).
6. To the fullest extent permitted by law:
 - a. UBIMET's total liability to the client (whether arising from any negligent or wrongful act or omission and/or from any failure to perform any obligation and/or otherwise) shall be limited (i) in case of flat fee agreements to the half of the amount of fees paid by the client to UBIMET during the term of the agreement and (ii) in case of agreements with recurring charges limited to the amount actually paid by the client for the Services provided by UBIMET during the six months prior to the occurrence of the first claim or cause of action or with AUD 20,000 (whichever is less);
 - b. UBIMET shall not be liable for any claim, loss or expense which is made after 2 years from the date the claim arises – after which there shall be deemed to have been unqualified acceptance by the client; and
 - c. UBIMET shall not be liable for any consequential loss whether direct or indirect, any special and/or punitive damages, loss of data, savings not realized, lost interest, expenditures made in vain, and/or lost profit.

7. Client agrees that apart from UBIMET's obligations expressly referred to in this Agreement UBIMET assumes no liability of the client of any kind arising out of any act and/or omission by or on behalf of the client pursuant to this Agreement and the client by this sub-clause indemnifies and holds UBIMET harmless from and against any and all such liability on and from the date of this Agreement.

§ 6
Duration of the Agreement

1. The term of this Agreement is as between the parties.
2. Subject to this sub-clause 6.2 below either of the parties in electing to terminate this Agreement for cause shall first serve on the other party a notice which:
 - a. specifies that there has been a breach or breaches by the other party of this Agreement ("Default");
 - b. says that this Agreement will be terminated without further notice unless the Default is remedied; and
 - c. allows not less than fourteen (14) days for the remedy of the Default.
3. If the notice referred to in sub-clause 6.2 above is not complied with and if the party not in breach so elects this Agreement shall from the earliest moment terminate and no further notice will be necessary.
4. The following are events of breach for the purposes of this sub-clause below:
 - a. Client or any of its employees, agents and/or contractors using, disclosing or transferring any Data for any other purpose than those expressly authorised under this Agreement;
 - b. Client defaulting in the payment of any monies due to UBIMET under this Agreement;
 - c. a party or any director for the time being of a party committing or suffering an Event of Insolvency; or
 - d. Client failing to properly indemnify UBIMET pursuant to the Client's obligations under this Agreement.
5. If an "event of breach" as defined in sub-clause 6.4 above occurs then the party not in breach may immediately, without mediating, without giving notice and without affecting any other right which the party not in breach may have:
 - a. rely on any event of breach as automatically terminating this Agreement; and/or
 - b. take such other steps as the party not in breach in its discretion elects to enforce any rights under this Agreement.
6. At the end of the term of the Agreement or on earliest termination of this Agreement all of the client's right to use the Data shall immediately cease and the client shall immediately cease using the Data.

§ 7
Data Protection

1. UBIMET collects client's personal information in order to provide client with products and services and for internal administration and operational purposes, market and client satisfaction research and in order to comply with legislative and regulatory requirements.
2. Clients expressly consents that UBIMET may use client's personal information and disclose it to its related bodies corporate and third parties (e.g. advertising partners) in order to inform client about products and services, special offers provided by UBIMET, its related bodies corporate and third parties that may be of interest by the client. Any revocation of this consent and any change in personal information shall be e-mailed to australia@ubimet.com.

§ 8
Final Provisions

1. The Terms and Conditions shall be governed by and construed in accordance with the laws of the State of Victoria, Australia and the parties irrevocably submit to the jurisdiction of any court of that State
2. UBIMET may sell, transfer or assign its rights and benefits under this Agreement at any time. Client shall not sell, sub-license, assign or otherwise transfer any of its rights under this Agreement without prior written approval of UBIMET which approval may be withheld at UBIMET's sole discretion.
3. The failure or omission of any party at any time and from time to time to enforce or require strict compliance with any provision of this Agreement shall not affect or impair such provision in any way or the rights of such party to avail itself of such remedies as it may have in respect of any breach or breaches of any such provision(s).

4. This Agreement contains the entire agreement between the parties about its subject matter and any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this Agreement and has no further effect.
5. If any provision of this Agreement shall be invalid or not enforceable in accordance with its terms all other provisions which are self-sustaining and capable of separate enforcement without regard to the invalid or unenforceable provision(s) shall be and continue to be valid and enforceable in accordance with their terms.
6. Each party shall do and execute all acts and documents required by this Agreement to be done or executed by any other party at such time as may be necessary and/or is reasonably required for the fulfilment by the parties of their respective rights and/or obligations under this Agreement.

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