

## General Terms and Conditions for 'EZYcount' Online services of superVX AG

### 1 Scope of Application

- 1.1 On the basis of these General Terms and Conditions (GTC), superVX shall enter into agreement with clients, who wish to avail themselves of the EZYcount services of SuperVX (hereinafter referred as the "Service"). These GTC shall form an integral part of the registration process on EZYcount and of any quotes and order confirmations of SuperVX. By placing an order or registering online, the client accepts these GTC. Any General Terms and conditions which deviate from, contradict or supplement these GTC shall not become a part of this agreement, unless explicitly agreed in writing.

### 2 Content and Scope of the services

- 2.1 Agreements may be entered into with clients to grant the right to access and use the Service via the website with the particular user role available to the client. This right is non-exclusive, non-transferable, and limited by and subject to these GTC. The client shall have no right to demand use of a particular version of EZYcount. Where EZYcount is subject to an update or upgrade, the range of services initially agreed may not be diminished.
- 2.2 SuperVX shall provide the server platform including any and all hardware and software for the operation and monitoring of the Service. This can be delivered through a third party.
- 2.3 The Service shall be depicted in the client's browser. The browser shall determine the design and also the functionality to an extent.

### 3 Availability of the Service

- 3.1 SuperVX provides 24 hours per day, 7 days a week, 365 days per year access to the Service. However, SuperVX will not be liable for interruptions to the Service and in particular shall not be liable for interruptions due to repairs and maintenance, change to the infrastructure or the introduction of new technologies.

### 4 Obligations to the client

- 4.1 The client shall be responsible for its own hardware and software components (including programs and computer configuration) as well as its own access to the internet.
- 4.2 When using the Service, the client shall be responsible for complying with any applicable laws and regulations, these GTC, any applicable user requirements of third party and any additional instructions from SuperVX. The client shall be responsible for the content of the Data which it, or third parties authorized by the client, transfer to superVX or allows the latter process. In the case of transferred data, SuperVX shall assume that such data and any graphics contained therein are neither illegal nor immoral and that they do not violate the rights of third parties. SuperVX shall not be under an obligation to verify that these requirements are met. The client shall indemnify SuperVX against any third party claim and shall reimburse SuperVX for any costs incurred by the latter as a result of any violations. The client furthermore undertakes to provide SuperVX with any information or documentation it requires in its defense against such claims.

### 5 Fees and Payment terms

- 5.1 The fees are to be paid in full before the subscription period of the Service begins.

### 6 Data protection System and Data Integrity

- 6.1 SuperVX and any auxiliary are required to handle the Data with confidentiality.
- 6.2 The client hereby confirms that it has been informed by SuperVX as to the existing security risks which arise when using the Internet and Internet technologies. The client is required to ensure the integrity of the systems, programs and Data which are within its sphere of influence. The client shall maintain secrecy of passwords and usernames with respect to third

parties. It is hereby agreed, that every log-in shall be deemed to have been carried out using the relevant user name and password by the client or users authorized by the client.

- 6.3 SuperVX shall take such measures as it deems appropriate and economically reasonable to secure the services and systems in its area of responsibility against external, non-authorized access or hacking in accordance with the latest technological advances. SuperVX shall provide no guarantees or warranties whatsoever for any kind of protection against non-authorized access by third parties.
- 6.4 SuperVX shall carry out any planned system interruptions, such as maintenance checks, which could lead to the Service being temporarily unavailable, wherever possible, outside office hours. It shall be entitled to interrupt the Service, where necessary (e.g. in the event of malfunction or any risk of abuse). The client shall not be entitled to claim compensation for damages against SuperVX.
- 6.5 The Data of the client, which is stored or used on the server of SuperVX, shall be backed-up by SuperVX exercising standard care and diligence on a daily basis. The methods for securing such Data shall be those of recognized back-up solutions in accordance with the latest technology. Said Data shall be stored for a period of 7 days. In the event of a loss of Data, SuperVX shall restore the Data as per the latest available back-up point.
- 6.6 The client is aware, that SuperVX is technically capable of seeing any Data made available to it. SuperVX will not access client's data without prior acceptance from the client. However, Data shall be made available to third parties in the event SuperVX is required to do so by law.
- 6.7 Anonymized Data shall be recorded, processed and used in statistical, marketing and product improvement purposes. SuperVX shall be entitled to use cookies and notification services.

### 7 Cookie Use

- 7.1 To create in particular a more pleasant use of the site, cookies or other witnesses are used and susceptible to automatically record personal information. They can be done by ezycount.ch or by others partners companies.

The User has the possibility to deactivate them in the safety parameters of his browser. If he doesn't make it, he agrees to the collection and to the processing of the collected data.

### 8 Suspension of the Service

- 8.1 SuperVX shall be entitled to suspend the service to the client with immediate effect, in part of in full, at the latter's expense as long as the client is in breach of these GTC or other contractual agreements or where it becomes likely that that use of the Service by the client or the latter's Data may injure the rights of third parties or may violate – or risk violating – the law and/or honest business practices. The service may further be suspended if the client's behavior in any way compromises the operational effectiveness of EZYcount.
- 8.2 The duration of any such suspension shall depend on the time needed to clarify whether a statutory violation has occurred, or on the duration of said violation or on the time needed to settle any dispute with third parties concerning said violation.
- 8.3 The client shall not be entitled to make any claim for compensation on account of any such suspension.

### 9 Data retention and restitution

- 9.1 The client shall under all circumstances remain the sole owner of the Data and may require that SuperVX return the Data at any time, fully or in part. This clause shall, however, not apply to any correspondence between SuperVX and the client and to any documentation which the former

possess either as original or as copies. The restitution of Data shall, as a rule, take place through the download from the client of a journal of all accounting booking for the client's account or a log file of all transactions of the client's account.

- 9.2 The client shall itself be responsible for the archiving of any Data in the legally prescribed manner as well as for complying with any statutory retention obligations.

#### **10 Warranties and Guaranties**

- 10.1 With regard to any malfunction in the provision of the Service which is the responsibility of SuperVX, the latter shall fulfill its warranty obligations by removing the causes of the malfunction (subsequent improvement). The client shall be required to immediately complain of any malfunction by complying completely with the documentation requirements (malfunction notification). The client shall undertake all reasonable measures which allow for or facilitate the malfunction to be identified or any damages and their causes to be removed. The client shall, in particular, be obliged, prior to making a malfunction notification to SuperVX, to initially check any possible sources of error in its own sphere of responsibility, such as terminal devices (computers, notebooks and smartphones), data connections etc., so as to exclude any malfunction from these sources. Where a malfunction is demonstrably not attributable to SuperVX, the latter shall be compensated for all efforts undertaken in connection with the removal of the malfunction at the usual hourly or daily rates. Where SuperVX should not be able to remove the malfunction correctly notified to it within a reasonable period of time, the client shall be entitled to withdraw from the agreement after providing a least thirty days' notice in writing. The client shall not be allowed to remove any malfunction itself or by appointing any third party.

- 10.2 The technical information, specifications and descriptions contained in the user documentation or other documents do not constitute guaranties or warranties on the part of SuperVX. SuperVX does not provide, in any form whatsoever, any kind of assurance as to the functionality or other economic characteristics or advantages of the Service and cannot provide any warranties that the Service can be used by the client without interruptions, error-free and in any combination of Data, IT-systems and other programs as desired by the client, or that any correction of a program error will not lead to further program errors.

- 10.3 Information given verbally by SuperVX as well as brochures and statements made in the course of advertising, regardless of their type, are non-binding insofar as they are not described as binding and shall not constitute any guarantee or warranty of any kind.

- 10.4 Guarantee and warranty claims shall expire six (6) months after they arise (absolute statute of limitations).

- 10.5 Any guarantee or warranty claims in excess hereof are explicitly excluded.

#### **11 Liability**

- 11.1 SuperVX shall be liable for any damages caused wilfully or by gross negligence. Slight negligence does not give rise to any liability. SuperVX declines any liability in respect of damages which the Client incurs as a result of technical defects, security breaches, malfunctions or attacks against the infrastructure of third-party companies with whom SuperVX works or on whom it relies (e.g. network operators). In the event of any

damages, any liability on the part of SuperVX shall under any circumstance be limited to the amount of the annually agreed user fee. The above ceiling on liability shall apply to both contractual and non-contractual or even quasi-contractual liability claims. Insofar as any liability on the part of SuperVX is excluded or limited, this shall also apply to any liability on the part of its auxiliaries.

- 11.2 Guarantee and warranty claims shall expire six (6) months after they arise (absolute statute of limitations).

#### **12 Agreement Terms termination**

- 12.1 The minimum agreement term, the termination notice period and the date of termination shall all be determined on the basis of the agreement concluded with the client. The right to immediate termination for good cause remains unaffected. SuperVX shall in particular have the right to terminate the agreement without notice in the event that the client: - Fails to comply with the provisions of these GTC, despite warnings; - Fails to purchase sufficient subscription period; - Succumbs to bankruptcy or where bankruptcy proceedings are suspended due to lack of an estate.

#### **13 Final Provisions**

- 13.1 Where the client is a partnership, then the partners shall be jointly and severally liable with respect to SuperVX.

- 13.2 Rights and obligations resulting from the agreement can only be transferred to third parties with the written consent of SuperVX. The client is in particular prohibited from subletting any services obtained from SuperVX (e.g. storage space) to any third parties. The transfer of the agreement by the client under a legal succession shall be excluded from this provision.

- 13.3 These GTC contain the entire agreement between the parties and shall replace any earlier, written and verbal arrangements between the Parties with regard to the same subject matter. There are no side agreements between the Parties. Any and all supplements and addenda to these GTC or any corresponding agreements must be concluded and confirmed in writing in order to be binding. The same shall apply to any deviation from the written requirement.

- 13.4 In the event that any provision of these GTC should be unenforceable or should prove to be invalid, then it shall only be void to the extent of its unenforceability or invalidity and shall otherwise be replaced by an enforceable and valid provision which a party acting in good faith would have considered a suitable economic replacement for the invalid and/or unenforceable provision. The remaining provisions of these GTC shall in any event remain in force. The same shall apply in the event of a loop-hole.

- 13.5 SuperVX explicitly reserves the right to amend these GTC at any time. The new conditions shall be notified to the client and shall be deemed to have been approved if no objection is received within one month thereof.

- 13.6 Swiss law shall be applicable to the exclusion of any other treaty law or conflict of laws legislation (Swiss International Private Law Act). The place of performance for the obligations of both Parties is Sion and the courts of Bern shall have exclusive jurisdiction