

COMAR online database

Terms and Conditions of Use

1. Domain of validity and users

- 1.1 These Terms of Use apply to the use of the COMAR online database. COMAR is a database containing information relating to globally available certified reference materials (CRM), in particular for chemical analysis and materials testing.
- 1.2 The COMAR online database is a common online database of the members of the COMAR Council, who act in accordance with the COMAR Memorandum of Understanding.¹ The activities of the COMAR Council are coordinated by the Bundesanstalt für Materialforschung und -prüfung (BAM) as a Council member.
- 1.3 These Terms of Use apply in connection with the Licence Agreement between the respective user (hereinafter also referred to as the "Producer" or "End User", cf. 1.4) and the Federal Republic of Germany, which is represented by the federal minister of the Federal Ministry for Economic Affairs and Climate Action, represented by the president of the Bundesanstalt für Materialforschung und -prüfung (BAM), Unter den Eichen 87, 12205 Berlin, Germany, hereinafter referred to as the "Operator".
- 1.4 Reference material producers (hereinafter referred to as "Producers") and end users (hereinafter referred to as "End Users") will be collectively referred to in the following as the "Users" of the COMAR online database. To the extent there are any divergences with respect to the use and application of the Terms of Use, these Terms shall expressly address such divergences. These Terms of Use therefore apply to both users.
- 1.5 The general terms and conditions of business or purchasing conditions of the User shall not apply, even if the Operator does not specifically express any objection to the same. This shall also apply if the User cites and makes reference to its own general terms and conditions of business or purchasing conditions in a letter of confirmation. Similarly, any previously agreed contractual terms and conditions, which contradict these Terms of Use or supplement them, shall not be recognised.
- 1.6 Differing agreements shall only be binding if they have been confirmed in writing by the Operator.

2. Conclusion of the Agreement and User account

- 2.1 The Producer warrants that the registration process as well as the conclusion of the agreement will be performed by an authorised person. Only natural persons who are of age may register. There is no claim to registration. The Operator reserves the right to reject registrations.
- 2.2 The Producer shall transfer to the members of the COMAR Council an application for the inclusion of its reference materials in the COMAR online database. Following the receipt of the application of the Producer requesting the inclusion of its reference materials, the members of the CO-

MAR Council will determine whether the Producer's reference materials meet the inclusion criteria for the COMAR online database. Insofar the Producer's reference materials meet the inclusion criteria, the members of the COMAR Council can accept the offer of the Producer in that the Operator creates a user account for the Producer and transfers to them the data they require for registration. Insofar the Producer receives the required data for registration in the COMAR online database from the Operator, the Producer is authorised to log in and confirm, by actively ticking the relevant box, the Terms of Use for the COMAR online database that can be viewed online at www.eptis.org/comar/terms.pdf. There is no claim to inclusion.

- 2.2 The subject matter of the licence agreement is the revocable right to use the COMAR online database. Currently, it is free to use, however, the Operator expressly reserves the right to introduce a fee-based business model. In this case, the Operator will inform the Producer in due time. Therefore, the Producer has no permanent claim to use the online database free of charge. If the Operator switches to a fee-based business model, the Producer may terminate the Licence Agreement.
- 2.3 A user account must be created in order to use the COMAR online database as a Producer. It consists of a user name and a password ("Login Credentials"). A user account can only be created by providing a current email address of the Producer. This email address is used at the same time to communicate with the Operator. The Producer is obligated to provide the Operator with a contact person.
- 2.4 The Producer is obligated to handle the Login Credentials with care and in a confidential manner. Any loss and misuse must be reported immediately. It is permitted to share the Login Credentials within the Producer's organisation ("Non-third Party"). However, it is only permitted to share the Login Credentials if the Operator is notified of the respective current contact. The Producer is prohibited, without the consent of the Operator, from sharing the Login Credentials with third parties and/or allowing third parties to access the profile by means of bypassing the Login Credentials.
- 2.5 If the Producer breaches its obligations as per the above Paragraph 2.4 and its user account is used by a third party, the Producer shall be liable for all activities performed in connection with use of the user account. The Producer shall not be liable if it is not responsible for the misuse of their user account.
- 2.6 The Producer warrants that the data used to create their user account ("Account Data") are correct and complete.
- 2.7 In the event of any communication of the Producer with other users, any contractual relationships shall only be established between the users involved. The Operator is neither the representative nor itself the contractual partner.

¹ Details on the COMAR Council, their membership and the Memorandum of Understanding can be found at the COMAR website at www.comar.org.

3. Use of the user account and use by the Producer

3.1 The user account allows the Producer to save and publish (e.g. in the form of text, photos, certificates, graphics, etc.) in particular content regarding CRM, e.g. for chemical analysis and materials testing as well as information regarding the Producer with the aim of informing the professional community about these contents.

3.2 The Operator shall have the right, at any time, to refuse to release, to block or delete content, in particular in the event of a breach of applicable law or third-party rights. The user has no claim to the publication and/or maintenance of individual functions of the online COMAR database. If the Operator suspends operation of the COMAR online database, the Operator will, stating the reason for this, require the Producer to back up content and independently delete said content.

3.3 The Operator strives to ensure fault-free operation of the COMAR online database. This is inherently limited to services whose provision are within the Operator's sphere of control. The Operator is at liberty to restrict access – entirely or in part, temporarily or permanently – to the online COMAR database due to maintenance work, capacity concerns and on the basis of other events, which are outside of its sphere of control. The Operator shall not offer any guarantee for the correctness, completeness, reliability, up-to-date nature and usability of the content provided.

4. Producer's duty of collaboration: Posting of content

4.1 The Producer assures the Operator that it will not upload any content to the COMAR online database, which breaches applicable law or common morals through its content, form, design or otherwise, in particular, that the Producer shall, when uploading content, take notice of applicable law (e.g. criminal, competition and youth protection law) and not breach any third-party rights (e.g. name, trademark, copyright, image and data protection rights).

4.2 It is not permitted, in particular, to disseminate content, which constitute, concern or contain

- incitement and instigation to commit crimes and violations of the law, threats to life, limb or property
- statements that violate personal rights, slander, defamation and defamation of character to the detriment of users and third parties
- violations of fair trading law
- copyright infringing content or content, which infringes other intellectual property rights

This also applies if, through the respective content, applicable law, third-party rights or moral standards are not breached.

4.3 The Producer shall have the right to create links in content, which it publishes on the COMAR online database, if the linked websites are free of content whose publication and/or dissemination is prohibited as prescribed by the above paragraphs 4.1 and 4.2. To the extent necessary, the Producer shall obtain the consent of the rights holder responsible for the respective linked websites prior to creating a link.

4.4 Copyright protected content may only be included verbatim in contributions without the consent of the respective rights holder, if this is done in accordance with quotation law.

5. Further duties of collaboration of the User

5.1 Without the express consent of the recipient, the Producer may not use the COMAR online database to send messages with advertising content to other users or third parties (spam).

5.2 In the event that the User takes advantage of the possibility of drawing the attention of third parties to the COMAR online database, it must ensure that the respective third party agrees to the forwarding of the promotional referral email or referral message.

5.3 The Producer must refrain from any activity that is likely to interfere with the operation of the COMAR online database or the technical infrastructure behind it. These include in particular:

- the use of software, scripts or databases in connection with the use of the COMAR online database
- the automatic reading, blocking, overwriting, modifying, copying of data and/or other content to the extent this is not necessary for the proper use of the COMAR online database.

5.4 If, with respect to the use of the COMAR online database and/or its functions, faults, violations of applicable law or infringements of third-party rights result and the Producer learns of this, the User will immediately inform the Operator of said fault.

6. Usage rights of the User

6.1 The Producer shall grant the Operator a non-exclusive, royalty-free right of use, unrestricted in terms of territory and content to the uploaded content for the duration of the Licence Agreement. The Operator shall have the right at any time to use, edit (with the exception of the certificates uploaded by the User) and commercialize the content posted by the Producer. This includes, in particular, the reproduction right, the distribution right and the right of communication to the public as well as the full right of making available to the public. The Operator shall have the right to make available to the End Users of the COMAR online database or other platforms of the Operator the uploaded content of the Producer (cf. 6.4), particularly with respect to the datasheets posted there and the certificates uploaded by the Producer. If the Producer terminates the Licence Agreement, the Operator is obligated to ensure that the Producer's content is no longer available for third parties on the COMAR online database. The Operator reserves the right to delete the relevant content and the user account of the Producer.

6.2 The Producer waives the right to cite the author.

6.3 To the extent the content of the COMAR online database is not made available by Producers under the prerequisites

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- of 6.1, the rights to the content of the COMAR online database shall be held by the members of the COMAR Council. The Producer is prohibited from duplicating, disseminating and/or publishing any such content of the database (platform IP) that is generally protected by copyright.
- 6.4 To the extent Users would like to download or use content from the database, the following applies: The Operator grants the User a simple, revocable, non-exclusive and non-sublicensable right to use the data itself for informational purposes. This includes the right to duplicate content, full-text documents by means of screen display and downloads, saving to the data archive of the User and making paper copies. Any exploitation of the database content is not permitted. There exists no claim to the right to use the database and/or to download its content.
- 7. Liability**
- 7.1 Unlimited liability: The Operator shall be liable without limitation for wrongful intent and gross negligence as well as prescribed by the Produkthaftungsgesetz (Product Liability Act). For slight negligence, the operator shall be liable for damage caused by injury to life, limb, or the health of persons.
- 7.2 Furthermore, the following limited liability applies: In the event of slight negligence, the Operator shall only be liable for the breach of a cardinal duty under the Agreement, the fulfilment of which makes the proper execution of the Agreement possible in the first place and on the observance of which the Producer may rely regularly. Liability for slight negligence is limited in its amount to the damages foreseeable at the time of the conclusion of the Agreement, the occurrence of which must typically be expected. The limitation of liability also applies to the benefit of the vicarious agents of the Operator.
- 8. Indemnification claim**
- 8.1 The User shall indemnify and hold harmless the COMAR Council, the Operator and its employees and/or agents in the event of a claim asserted on the basis of an alleged or actual infringement of rights and/or infringement of third party rights, which are caused by actions of the User in connection with its use of the COMAR online database and for which the User is responsible. Furthermore, the User shall be obligated to reimburse the Operator for all costs incurred by the Operator in connection with the claim(s) asserted against it by third parties. The reimbursable costs also include costs of appropriate legal defence.
- 9. Data protection**
- The User can obtain all information regarding the processing of personal data from the Operator's privacy statement. It can be viewed at www.eptis.org/disclaimer.htm.
- 10. Contractual term/ termination**
- 10.1 The Agreement shall be concluded for an indefinite term and can be terminated by either party at any time without any adherence to a notice period.
- 10.2 In the event of termination, the Producer shall no longer have access to their user account and to uploaded content. Furthermore, the provision under 6.1 shall apply.
- 11. Amendment of the Terms of Use**
- 11.1 The Operator shall have the right to change or supplement, at any time, provisions in these Terms of Use with effect for the future insofar this is warranted by necessary legal or functional adjustments to the website, e.g., in the event of technical changes.
- 11.2 The Producer will be informed by email of any change or supplement no later than six weeks before the change or supplement takes effect without any need for the forwarding of amended or supplemented individual terms or a new version of the terms; notification of the changes or supplements performed shall suffice. The Producer shall ensure that the Operator is provided with an up-to-date email address. The Operator will provide a link in the notice, via which the new version of the Terms of Use can be viewed as a whole.
- 11.3 Unless the Producer objects to the change or supplement within 30 days following the notice of the change or supplement, this shall be deemed consent with the change or supplement; the Operator will refer to this in the notice.
- 12. Final provisions**
- 12.1 Services shall be rendered exclusively on the basis of these Terms of Use.
- 12.2 This Agreement shall be governed by German law to the exclusion of the UN Convention on Contracts for the International Sale of Goods.
- 12.3 If the User is a merchant within the meaning of the German Commercial Code (HGB), a legal entity under public law or a special fund under public law, the City of Berlin shall be the exclusive place of jurisdiction for all disputes arising from or in connection with contracts between the Operator and the User.
- 12.4 If the Agreement contains ineffective provisions, such shall be without prejudice to the effectiveness of the remainder of the Agreement.