



## Terms of Use

### 1. Scope of application

These Terms of Use define the contractual relationship between COLOP Digital GmbH, 4600 Wels, Dr.-Arming-Straße 5, FN 491965d (hereinafter: '**COLOP**') and its customers in relation to the download, installation and use of the COLOP printer driver for Windows (hereinafter: '**Driver**') for the COLOP e-mark stamp, a battery-powered mobile marking device based on inkjet technology (hereinafter: '**COLOP stamp**'). These Terms of Use are intended for customers who are considered consumers according to the provisions of consumer protection legislation (KSchG) (hereinafter '**CONSUMERS**') as well as customers who are not considered a consumer (hereinafter '**CORPORATE CUSTOMER**').

A CORPORATE CUSTOMER is anyone to whom the legal business forms part of the operations of his company. Companies are defined here as any organisation permanently established to conduct independent business activity, even if on a not-for-profit basis.

Hereinafter, corporate customers and consumers are designated as '**CUSTOMER**' where provisions apply jointly to consumers and corporate customers. In all other provisions, a distinction is made between CONSUMER and CORPORATE CUSTOMER.

### 2. Conclusion of contract, delivery

2.1. COLOP offers the possibility of downloading the installation file for the Driver to a PC from its website [https://emark.colop.com/en\\_eur/mobile-printing/the-e-mark/app-software](https://emark.colop.com/en_eur/mobile-printing/the-e-mark/app-software) (hereinafter COLOP website) and then to install the Driver on that PC. Before downloading the installation file from the COLOP website, the CUSTOMER confirms that it accepts these Terms of Use. Here, before downloading the installation file, the CUSTOMER is able to download the Terms of Use by clicking the 'here' link button, to save them and to print them out on any standard word processing programme. If the CUSTOMER is unable to accept these Terms of Use, it is then not possible to download the installation file.

2.2. By downloading the installation file, the CUSTOMER agrees to these Terms of Use.

2.3. The Driver is supplied in the form of an immediate download.

### 3. Object of the contract

The driver offers the possibility to send print information to the COLOP stamp with all Windows programs that have a print function. It should be noted that the COLOP stamp can also be operated without this printer driver, namely via the "COLOP e-mark App" application available in the Google Play Store and/or Apple App Store.



#### **4. Installation and use of the Driver**

- 4.1. The Driver is available as a free-of-charge download. Downloading this Driver does not oblige the CUSTOMER to acquire a COLOP stamp, but the Driver can only be used in combination with the COLOP stamp, which must be purchased separately.
- 4.2. Use of this Driver is contingent on it being installed successfully on a PC. For this, the CUSTOMER must download the installation file for the Driver from the COLOP website to a PC (download, also see point 2.1 above) and must then click on the installation file in order to install the Driver on the PC. For this, the CUSTOMER has to follow the self-explanatory instructions given by the installation program. After successful installation of the driver, the COLOP stamp appears as (another) printer in the printer menu of the word processing program.

#### **5. Right of use**

- 5.1. COLOP has been granted the right by the owner of the printer driver to reproduce the driver free of charge in any country of the world and to distribute it to its customers in connection with COLOP printing devices and to enable them to use the printer driver properly.
- 5.2. Limited to the term of this contractual relationship, COLOP assigns the CUSTOMER the single, non-transferable and non-sublicensable right to use this Driver in its current version together with updates in accordance with these terms of use. Transferring or disclosing the source code for this Driver is not obligatory. There is no obligation on the part of COLOP to continue developing this Driver (updates).
- 5.3. The Driver may include open source software components; these are assigned and used free of charge and are subject to the Terms of Use of the owner of the applicable rights.
- 5.4. The CUSTOMER must not modify, change, strip down, recompile, publish, reverse-engineer or reproduce this Driver. The CUSTOMER is only permitted to use this Driver for his own purposes, and to make a copy of the installation file for archiving or backup purposes. In the event of any infringement of this provision, COLOP shall be indemnified and held harmless by the CUSTOMER from third-party claims.
- 5.5. The Driver must only be used with the COLOP stamp acquired by the CUSTOMER (see Point 1 of these Terms of Use) for which the CUSTOMER has provided the identification number upon downloading the application. Use of this Driver for other purposes is strictly prohibited. In particular, it is prohibited to use this Driver for other stamps or for any other comparable third-party devices.

In the event of any infringement of this provision, COLOP shall be indemnified and held harmless by the CUSTOMER from third-party claims of third parties (including but not limited to claims of the owner of the printer driver).



## 6. Support

COLOP provides free-of-charge support for the Driver on its website ([emark.colop.com](http://emark.colop.com)) as well as by e-mail ([emark@colop.com](mailto:emark@colop.com)). Even though COLOP shall endeavour to provide accessible support, COLOP does not specifically assure access to such support. COLOP is also entitled to terminate the provision of support or to not provide it in individual cases without entitling the CUSTOMER to any claims from this action. The CUSTOMER cannot found any warranty and/or compensation claims against COLOP on the basis of this free-of-charge service.

## 7. Third party property rights

- 7.1. If any claims are made against the CUSTOMER as a result of or in relation to an alleged infringement of intellectual property rights (e.g. patent, brands, design), copyright or some other third-party right, for which COLOP is to be held responsible, COLOP shall within a reasonable period of time choose freely and at its own expense to obtain rights to use the Driver or shall modify it in such a way that IPR is no longer violated, but the right of use remains in an equivalent and equal form. If COLOP is unable to accomplish this under commensurate conditions, the CUSTOMER has the legal right to withdraw from the contract and also has the right of termination agreed upon under Point 9.3 and the entitlement to claim compensation as contractually agreed upon under Point 8.
- 7.2. The obligations of COLOP named in Point 7.1 only apply if the CUSTOMER notifies COLOP immediately and in writing of the claims being made by the third party, does not recognise the existence of an infringement and reserves COLOP the right to take all protective measures and court negotiations.
- 7.3. In the event that the Customer stops using the Driver for reasons of damage minimisation or other important reasons, he shall be obliged to inform the third party that discontinuation of use does not constitute an acknowledgement of any infringement of intellectual property rights.
- 7.4. Claims by the CUSTOMER in accordance with Point 7.1 are excluded if he is responsible for the infringement of intellectual property rights.
- 7.5. Claims by the CUSTOMER arising from Point 7.1 are also excluded if the infringement of intellectual property rights arises by a form of use of the Driver not envisaged by COLOP or was caused by the CUSTOMER making a change to the Driver.
- 7.6. COLOP does not accept any liability for any infringements of intellectual property rights arising from third-party hardware or software components incorporated by the CUSTOMER. In such cases, COLOP shall be indemnified and held harmless by the CUSTOMER from third-party claims with immediate effect.

## 8. Warranty and compensation for damages

- 8.1. The following provisions apply to CONSUMERS and CORPORATE CUSTOMERS:



- 8.1.1. COLOP assures the suitability of this version of the Driver for the contractual use of the COLOP stamp in accordance with the **User Manual e-mark** provided and valid at the time of signing of the contract and made available to the CUSTOMER before conclusion of the contract in several languages on this website: [https://colop-emark.zendesk.com/hc/en-150/article\\_attachments/6089784196381/Manual Printer Driver en.pdf](https://colop-emark.zendesk.com/hc/en-150/article_attachments/6089784196381/Manual_Printer_Driver_en.pdf) The e-mark user manual in English is available to the customer on the website.
- 8.1.2. COLOP and the CUSTOMER agree that it is not possible to develop computer programmes in such a way that they operate faultlessly under all conditions of use. **Since the occurrence of software errors can therefore not be excluded, COLOP provides no assurance for the software functioning continuously without errors.**
- 8.1.3. Warranty claims are excluded wherever a fault arises as a consequence of improper use, in particular as a consequence of the use of consumables or wearing and spare parts not approved by COLOP, the use of consumables after their shelf life has expired, the improper operation or use of hardware or software, any modification not approved by COLOP and/or adaptation of the hardware or software, or of insufficient compatibility or performance capability of third-party hardware and/or software not obtained from COLOP.
- 8.1.4. COLOP provides no assurance for defects, faults, malfunctions or damage resulting from operator error or that could have been prevented after close study of and compliance with the instructions in the operating manual (Owner's Manual) issued with the COLOP stamp, or resulting from use outside the scope of the operational limits named in that operating manual.
- 8.1.5. For damages caused to the CUSTOMER in the context of business activities, COLOP shall only be liable for cases of deliberate intent or of gross negligence on its part, or of deliberate intent and gross negligence on the part of agents working for COLOP, with the exception of personal injury for which COLOP is liable even in cases of slight negligence. Full replacement in relation to secondary damage, damage solely done to assets, loss of profits and damages arising from third-party claims is excluded in any case for CORPORATE CUSTOMERS, and for CONSUMERS only in the event of slight negligence on the part of COLOP.
- 8.2. The following provisions only apply to CORPORATE CUSTOMERS:
  - 8.2.1. Notices of defects must be issued by CUSTOMERS within 5 working days of downloading the Driver subject to the exclusion of all warranty and/or compensation claims and/or voidability for mistake must be made in writing.
  - 8.2.2. For defects that were not discovered until after this deadline, the warranty period extends for 12 months from the date of download of the Driver. Notices of defects of this nature must be issued in writing within 5 working days of discovery of the defect subject to the exclusion of all warranty and/or compensation claims and/or voidability for mistake. The timely announcement of a defect does not substitute the enforcement in a court of law of this defect within the limitation period.



- 8.2.3. The CUSTOMER is always obliged to provide verification that the Driver was defective at the time of handover, and the legal assumption enshrined in Section 924 ABGB is expressly excluded.
- 8.2.4. The CUSTOMER is obliged to provide COLOP with all documents and information needed to remedy defects. If an announcement of defect is made improperly, COLOP is entitled to demand from the CUSTOMER full reimbursement of any expenditure it may incur as a result.
- 8.2.5. COLOP retains the right to satisfy warranty claims through replacement, remedial action or by revoking the contract.
- 8.2.6. CORPORATE CUSTOMERS always have an obligation to provide proof of any fault on part of COLOP or its agents; application of Section 1298 ABGB is therefore expressly excluded.
- 8.2.7. In respect to CORPORATE CUSTOMERS, the limitation periods defined in Section 1489 ABGB shall be shortened so that compensation claims lodged against COLOP must be argued in court within six months from awareness of damage and cause of damage, and by no later than three years after the download of the Driver.
- 8.2.8. In relation to CORPORATE CUSTOMERS, liability, regardless of the legal reason for liability (contract, dereliction of duty, absolute liability or some other legal reason) shall be restricted to the current market value of the COLOP stamp acquired by the CUSTOMER. This restriction of liability does not apply to damage arising from injury to life, limb, or health of a person.
- 8.2.9. In relation to CORPORATE CUSTOMERS, liability is excluded for production downtime, loss of earnings, loss of use, contractual impairments or other forms of consequential damage.

## 9. **Duration**

- 9.1. This contractual relationship for use of the Driver is concluded for an indefinite period of time. The CUSTOMER has the right to terminate the contractual relationship at any time without the need to comply with any notice of termination period.
- 9.2. COLOP has the right to terminate the contractual relationship subject to serving two months' notice.
- 9.3. COLOP and the CUSTOMER are also entitled to terminate the contract without serving notice if compelling grounds for doing so exist. Compelling grounds include an infringement of these Terms of Use.



9.4. In all cases, the CUSTOMER is no longer entitled to use the Driver. In the event of any infringement, COLOP shall be indemnified and held harmless by the CUSTOMER from third-party claims.

## 10. **Adaptation of Terms of Use**

10.1. COLOP is authorised to adapt these Terms of Use and to amend them if this becomes necessary as the result of changes in jurisdiction, legislation or other technical reasons.

10.2. The amendments are notified to the CUSTOMER two weeks in advance using the e-mail provided by the CUSTOMER at the time of the download. The CUSTOMER can notify COLOP by the same line of communication (an e-mail reply) within two weeks that he does not agree to those amendments. In such cases, this contract of use is considered to have been revoked. In such cases, the CUSTOMER is no longer entitled to use the Driver. In the event of any infringement, COLOP shall be indemnified and held harmless by the CUSTOMER from third-party claims.

If the CUSTOMER fails to reply within 2 weeks, from the first time that the Driver is used after this period has elapsed, he is deemed to have agreed to the new Terms of Use.

## 11. **Data protection**

11.1. COLOP is entitled to obtain the business details recorded on the COLOP stamp that do not include any personal details (e.g. software versions, ink usage, operating temperature, frequency of use or service life) via remote diagnosis and, while maintaining confidentiality, to save, analyse and use those details without restriction for its own business purposes.

11.2. To protect personal data, COLOP shall comply with the applicable provisions of data protection and shall in particular oblige all COLOP personnel involved in contractual fulfilment to data confidentiality in relation to the processing of data.

11.3. COLOP shall record, process and use the names, job titles, business addresses, business telephone and fax numbers provided by the CUSTOMER as well as the e-mail addresses of the CUSTOMER's employees to the extent and for so long as this is necessary to carrying out precontractual measures, or establishing, executing or terminating the contractual relationship, or where COLOP has a significant level of authorised interest. To the extent required for the delivery of services to be provided by COLOP, COLOP shall make the aforementioned contact details available to other COLOP companies based within the EU, and to third parties employed in the applicable contractual relationship. COLOP companies that fit the above definition are affiliated companies within the Group trading as COLOP Stempelerzeugung Skopek Gesellschaft m.b.H. & Co. KG. Processing is based on Art 6 (1) lit b and f GDPR.

11.4. COLOP shall provide, in an unsolicited manner and free-of-charge, the CUSTOMER and its employees with information about the relevant personal details that it is storing. On the basis of legal requirements, the CUSTOMER and its employees who are concerned have the right to demand the correction, deletion, restriction on processing



or the communication of personal details to a third party. In addition, the CUSTOMER and its involved employees have the right to appeal to a supervisory authority.

- 11.5. The party responsible for all questions relating to data protection and for delivery of the rights described in Point 11.4 is COLOP, and it can be reached at the following address:

COLOP Digital GmbH  
Dr.-Arming-Straße 5  
4600 Wels, Austria  
Tel.: +43 7242/66 104  
Fax: +43 7242/46 664  
e-mail: [emark@colop.com](mailto:emark@colop.com)

## 12. **Right of withdrawal (cancellation right) for CONSUMERS**

- 12.1. The following provisions (Points 12.2 to 12.5) only apply to customers considered to be consumers as defined in Point 1 (hereinafter called CONSUMER-CUSTOMER).
- 12.2. In accordance with Section 11 of Austrian FAGG legislation (relating to remote and external business), a consumer is entitled within 14 days to cancel contracts finalised as part of a remote sale.
- 12.3. In accordance with Section 18 (1) 1 Z 11 of FAGG legislation, a consumer does not have a right of withdrawal (cancellation right) for the delivery of digital content not stored on a physical data carrier if the company – with the express consent of the consumer, combined with the latter’s awareness of the loss of this right of withdrawal (cancellation right) where contractual fulfilment commences prematurely, and after provision of a copy of the final version of the contract – has already begun with the delivery before the end of the withdrawal period.
- 12.4. It is established that
- this contract was concluded as a remote sale;
  - the Driver constitutes a delivery of digital content not stored on a physical data carrier and that it can be installed and used immediately after the download;
  - the CONSUMER-CUSTOMER can download, save and print these Terms of Use on any standard word processing program and that with these Terms of Use the CONSUMER-CUSTOMERS has received all of the information defined in Section 4 (1) FAGG.
- 12.5. **The CONSUMER-CUSTOMER is therefore aware that the company (COLOP) is delivering its service from the time the Driver is downloaded and before the cancellation period defined in Section 11 FAGG expires, which entails the loss of the right of withdrawal according to Section 18 FAGG, and the CONSUMER CUSTOMER provides his express consent to this.** After the installation file has been retrieved, the CONSUMER-CUSTOMER shall also once again issue his express consent.



### 13. Final provisions

- 13.1. In the event of one or more of the provisions in these Terms of Use becoming entirely or partially ineffective, unlawful or not executable, this shall not affect the application, lawfulness or enforceability of the remaining provisions in these Terms of Use. COLOP and the CORPORATE CUSTOMER undertake to act immediately and in good faith to replace any contractual terms that become ineffective, unlawful or unenforceable with provisions that reflect as closely as possible the original economic purpose of the invalid contractual provision. All of this applies by extension to any and all loopholes in these Terms of Use.
- 13.2. Austrian Law applies, which excludes any application of the referring statutes of international private law and of the UN convention on the international sale of goods (CISG). In relation to CONSUMERS whose normal place of residence is in the EU this choice of legislation applies only insofar as this does not impair any compelling legislative provisions of the member country in which the CONSUMER has its normal place of residence or usual working location.
- 13.3. The sole court of jurisdiction for any and all disputes that may arise from (or in connection with) the contractual relationship and/or from any other contracts between COLOP and a CORPORATE CUSTOMER shall be the court with jurisdiction for the town of Wels. The same applies to CONSUMERS with a place of residence outside the European Union.
- 13.4. The contractual contents, all other information, after-sales service, data information and the settlement of complains shall be recorded and processed in German.

### 14. Alternative dispute resolution

- 14.1. The EU Commission has provided a platform for settling disputes online under the following link: <https://ec.europa.eu/consumers/odr>
- 14.2. This platform serves as the point of contact for out-of-court settlement of disputes arising from online purchase or service contracts to which a Consumer is party.
- 14.3. COLOP is neither obliged nor willing to participate in dispute resolution before a consumer arbitration board.