

## Conditions of Use for using Welser Profile Creator

### 1. Scope

- 1.1. These General Conditions of Use (hereinafter referred to as “GCU”) govern the requirements and conditions, as well as other aspects of the use of the “Creator” profiles configurator provided by Welser Profile Austria GmbH, which users, as defined in these GCU, can access at <https://creator.welser.com/> (hereinafter referred to as “Creator”).
- 1.2. Creator is operated by Welser Profile Austria GmbH (hereinafter referred to as “Welser”), a limited liability company incorporated in the Commercial Register of the Regional Court of St. Pölten under FN 189291 w, which has its head office in Ybbsitz, business address Prochenberg 24a, 3341 Ybbsitz, phone number: +43 7443 800-0, email address: [at@welser.com](mailto:at@welser.com), sales tax ID number: ATU48017809. Welser is the contractual partner of the user with regard to all agreements on the use of Creator.
- 1.3. Users, as defined herein, are natural persons who create a user profile on Creator, regardless of whether they are consumers or contractors. Unless stipulated to the contrary herein, the provisions of these GCU shall apply equally to consumers and contractors.
- 1.4. These GCU shall solely apply between the user and Welser in relation to the use of Creator. Application of the user’s General Conditions of Use shall be excluded.

### 2. Conclusion of contract, registration

- 2.1. Registration by the user is required for the use of Creator. Providing the option of registration for Creator on the website <https://creator.welser.com/> (hereinafter referred to as “Website”) constitutes a legally-binding offer from Welser to the user to enter into a contractual relationship for the use of Creator under the terms of these GCU.
- 2.2. The user accepts the legally-binding offer from Welser by starting the registration process for Creator on the website and subsequently completing it in full. As part of the registration screen the user is guided through all necessary technical steps and is called upon to provide the data required for his or her registration. Prior to completing registration the user has an opportunity once again to review all provided data and

where appropriate correct such data with commonly used mouse and keyboard commands.

- 2.3. In order to allow for registration to be completed successfully, prior to forwarding data to Welsers, the user shall confirm these GCU and the data privacy statement for Creator, in the latest effective version, by clicking on the corresponding box in the registration screen and subsequently pressing the data transfer button in the registration screen.
- 2.4. The user forwarding his or her complete registration data to Welsers means the contractual relationship is effectively entered into between Welsers and the user for the use of Creator under the terms of these GCU. Welsers shall immediately confirm successful registration to the user by sending an email to the address indicated in his or her registration. The confirmation of registration also contains a PDF copy of these GCU and the data privacy statement for Creator in the effective version for the user.
- 2.5. Once the user has received confirmation of registration, he or she may access the range of Creator services immediately and can use them in accordance with the provisions of these GCU.
- 2.6. Upon successful registration an account is created for the user. The user undertakes to handle login details for this account carefully and to take reasonable precautions to prevent unauthorized external access to this account. Changes to the data provided by the user in the course of registration are possible at any time via the user account.
- 2.7. The contractual relationship between the user and Welsers can only be concluded in German. During registration, these GCU as well as the data privacy statement for Creator will be made available to the user for download for information and confirmation (see clause 2.3). The user can access and store these documents electronically. Welsers shall not store the text of the contract. The user is therefore required to personally ensure the download and appropriate archiving of the contractual documents. Otherwise, the user can access the GCU as well as the relevant effective version of the data privacy statement on the website at any time.

### **3. Amendments to the GCU**

- 3.1. Welsers reserves the right to adjust Creator functions unilaterally, in particular to upgrade and extend them, where this is necessary or useful in order to: (a) provide the best possible range of services from the Welsers's point of view in accordance with the latest science and technology and/or current market trends and standards; (b) to ensure the competitiveness of Creator and of the range of services provided thereon in relation to other market participants; (c) guarantee and/or improve the contractual conformity and/or security of Creator and/or the range of services provided thereon; and/or (d)

ensure disruption-free use by all users of Creator and/or of the range of services provided thereon in accordance with relevant applicable legislation and existing third-party rights. The use of such future functional changes and upgrades of Creator and the range of services provided thereon is also subject to the terms of these GCU in each case.

- 3.2. Moreover, Welsers also reserves the right to make any other unilateral adjustment to these GCU, in particular changes that are necessary to ensure the conformity of these GCU with effective legal regulations.
- 3.3. The relevant adjustment of Creator and/or of the range of services provided thereon and/or of these GCU is only permitted if and when this is acceptable to the user.

## **4. Service content**

- 4.1. Creator is an online tool for compiling digital concepts, drawings and diagrams based on which metal profiles can be manufactured. The service content and functional scope of Creator result from the nature and the description available on the website of the applications provided within the framework of Creator.
- 4.2. Maintenance and updates of the IT systems, which form the basis for the operation of Creator, shall be carried out as far as possible without operational disruption. In urgent cases immediate corrective action may be required and may be carried out during normal business hours. Welsers reserves the right to suspend the user's access to Creator for the time period that is absolutely necessary in such cases.
- 4.3. The user's forwarding of concepts/drawings/diagrams compiled via Creator to Welsers does not constitute an offer from the client to enter into a contract with Welsers. In fact such a transfer constitutes an invitation to Welsers to submit a legally-binding offer (invitatio ad offerendum). Welsers is not under any obligation to accept this invitation.
- 4.4. It is hereby explicitly pointed out that concepts/drawings/diagrams compiled via Creator might not be feasible in practice. Creator shall not serve to check on or verify the technical feasibility of concepts/drawings/diagrams compiled thereon, nor shall it guarantee any such feasibility.

## **5. Restrictions on use**

- 5.1. The user undertakes to refrain from any activity that is likely to impair the operation of Creator or the technical infrastructure that lies behind it. This includes, in particular, the

use of harmful software or databases related to the use of Creator.

- 5.2. The user undertakes, when using Creator, not to engage in any activity or to create and/or disseminate any content that violates legal prohibitions, public morals, and/or the rights of third parties. The user shall fully indemnify and hold Welser harmless in the event of failure to comply with these obligations.
- 5.3. Automatic sorting, blocking, overwriting, modifying and/or copying of data and/or other content, unless required for the correct use of Creator, is explicitly prohibited.

## **6. Technical requirements**

- 6.1. The user is responsible for providing a suitable device and an appropriate Internet connection to make use of Creator and the range of services provided thereon. When using Creator with a PC it must have at least Windows operating system version 10 and a browser such as Microsoft Edge or Google Chrome or equivalent (or a younger version of these operating systems). The minimum required internet bandwidth for the use of Creator is 20 Mbit/s.
- 6.2. Moreover, the user is responsible for keeping the software on his or her device up-to-date by installing available updates. If the user fails to do so, he or she shall expect restrictions (until completely resolved) on the usability of Creator.
- 6.3. There are no special technical safeguards in relation to Creator.

## **7. Free provision**

- 7.1. The use of Creator and all associated service content shall be made available to the user free of charge. In particular, the user shall not make any payments for using the functions of Creator.

## **8. Termination of the contractual relationship, deletion of data**

- 8.1. The contractual relationship between Welser and the user for the use of Creator is entered into for an indefinite term. Ordinary, unfounded termination of the contractual relationship is possible for each party without giving reasons by observing a notice period of two weeks.

- 8.2. The respective contractual relationship may be terminated without notice for good cause at any time and without prejudice to the above provisions. Good cause authorizing Welser to issue extraordinary termination shall include, but not be limited to:
- a) infringement by the user of one of the provisions referred to in these GCU, unless the user remedies this infringement within a maximum of 14 days from the corresponding request by Welser;
  - b) if the user infringes the provisions of these GCU within a continuous period of three months, irrespective of whether each of these breaches has been remedied within the period specified in subsection a) above and irrespective of whether Welser has sent a request for remediation to the user;
  - c) use of Creator by the user in a way that infringes the rights of third parties;
  - d) use of Creator by the user in a way that damages the IT infrastructure associated with Creator;
  - e) failure of the user to access Creator for a period of at least two years.
- 8.3. If the contractual relationship between Welser and the user has been terminated effectively, Welser is entitled to block the user's access to Creator, to prohibit him or her from continuing to use Creator, and to delete the user's account and the associated data or data secured thereon, unless Welser is entitled or obliged to retain such data. However, the user shall exclusively be entitled to demand access to Creator within a period of two weeks from the termination of the contractual relationship taking effect for the purpose of otherwise securing any data which the user has lawfully stored on Creator. This does not apply in the event of termination pursuant to clause 8.2 subsection d). Clause 9.6 shall not be affected.
- 8.4. If the user wants to instigate deletion of his or her account by means of termination, he or she shall notify Welser hereof by email to [creator@welser.com](mailto:creator@welser.com). Welser deletes the user account and the associated personal data in this case with effect from termination of the user's contractual relationship with Welser. If the contractual relationship does not end on a working day, data shall be deleted on the following working day.
- 8.5. Irrespective of other provisions set out in clause 8 herein, Welser shall delete or anonymize the user account if no login to Creator has taken place for a period of two years.

## 9. Right of revocation for consumers

- 9.1. Only users who are consumers are entitled to a right of revocation. Where the term “user” is employed in clause 9 herein, this shall exclusively refer to consumers as defined in KSchG [Consumer Protection Act].
- 9.2. Users have the right to cancel any contract entered into with Welser on the use of Creator within 14 days, without giving reasons. The cancellation period shall be 14 days from the date of contract conclusion (cf. clause 2.4).
- 9.3. In order to exercise the right of revocation, the user shall inform Welser in a unilateral declaration (e.g. by posting a letter or email) of the decision to cancel the contract. The user can use the attached sample cancellation form (cf. clause 9.4), which however is not mandatory.
- 9.4. In order to observe the cancellation deadline it is sufficient for the user to send notification of exercising the right of revocation before expiry of the cancellation deadline.

**Sample cancellation form**

(If you intend to cancel the contract, please fill out this form and send it back.)

– To **Welser Profile Austria GmbH**, Prochenberg 24a, 3341 Ybbsitz,  
Phone number: +43 7443 800-0, email address: at@welser.com.

– I/we (\*) hereby cancel the contract entered into by me/us (\*) for use of the configurator provided by Welser Profile Austria GmbH.

– Contract concluded on (\*)

– Name of consumer(s)

– Address of consumer(s)

– Signature of consumer(s) (only in case of paper-based notification)

– Date

(\*) Delete as applicable.

#### 9.5. Consequences of revocation:

If the user withdraws from the contract by revocation, he or she shall no longer use Creator and the services provided thereon and no longer make it available to third parties, and Welser is entitled to block the user's access to Creator and the relevant areas of the website. Welser is entitled to continue using content that does not include personal data and that the user has provided or compiled when using Creator, if: a) such contents are only useful in relation to Creator; b) content exclusively relates to use of Creator by the user; c) content has been aggregated by Welser with other data and cannot be disaggregated or can only be disaggregated at disproportionate expense; or d) the user has generated content in conjunction with others and other users may continue to use such contents.

9.6. Except in the cases of clause 9.5 a) to c), Welser shall provide the user with all content that does not include personal data and that the user has provided or compiled upon request when using Creator in such a way that he or she can recover such content free of charge, without being obstructed by Welser, within a reasonable deadline and in a commonly used and machine-readable format.

## 10. Warranty and liability

10.1. The relevant statutory regulations of VGG [Consumer Guarantee Act] shall apply to users who are consumers.

10.2. The liability of Welser for damages caused by slight negligence is limited for consumers to cases of breach of a material contractual obligation. This limitation on liability does not apply in case of personal injuries.

10.3. Any warranty from Welser under the relevant contractual relationship with the user is excluded for users who are contractors. Welser is not therefore liable to companies, in particular for minimum availability and/or error-free usability of Creator; clause 4.2 does

not grant users who are contractors any rights that are in conflict with the above. Article 1(3) VGG is hereby mutually waived.

- 10.4. The liability of Welsers for damages is limited to cases of gross negligence and intent in respect of contractors. Compensation claims for lost profit and consequential damages are fully excluded. This limitation on liability does not apply in case of personal injuries.
- 10.5. Welsers is not liable for damages caused by downloads on external computer systems and other technical devices, or for any loss and/or delayed or other faulty receipt of data or messages, unless Welsers is at fault in each case. Even in the case of fault, Welsers is exclusively liable within the scope of limitations on liability under this clause 10.
- 10.6. Welsers cannot guarantee that access to the platform is possible at any time without interruption and free of errors. Welsers shall not be liable for short-term interruptions, changes or terminations of specific functions for services related to the configurator. Welsers shall not be liable for malfunctions or impairments, or for losses of data. The user is therefore responsible for regular updating of the software used, for regular data backups, up-to-date virus protection, and effective firewall systems.
- 10.7. Welsers does not assume any liability to the user for data, images, diagrams, drawings, etc. stored by the user on the configurator, or for such data available for indefinite periods or for the periods indicated in these GCU. It is therefore the user's responsibility to make regular backup copies in good time.

## **11. Intellectual property rights, granting of license by the client**

- 11.1. Creator and its underlying programs and software, as well as all content published by Welsers on Creator, are protected by copyright, whereby Welsers holds all exclusive, sub-licensable, unlimited rights of use and exploitation in terms of timing, geographical area and content. Copies in any form, in whole or in part, are also unauthorized and prohibited, as is any other simulation of Creator and/or underlying programs and software and/or copyrighted content.
- 11.2. The user hereby grants Welsers an exclusive, sub-licensable, transferrable, unlimited right of use in terms of timing, geographical area and content to copyright and other industrial property rights, intellectual property rights, property or similar rights that arise in the use of Creator, or are depicted or made available, etc. free of charge, as well as all rights of exploitation, as defined in the Austrian UrhG [Copyright Act]. Clause 9.5 and Article 24(5) VGG [Consumer Guarantee Act] shall not be affected. The exclusive right of use includes all currently known types of use, in particular with regard to commercial use and exploitation of the concepts/drawings/diagrams compiled via Creator, as well as all use and exploitation types to be disclosed in future. Welsers is therefore entitled in



particular to edit, replicate, disseminate, publish (including parts) of the concepts/drawings/diagrams created by the user in Creator.

- 11.3. Where the user compiles drafts/drawings/diagrams in Creator, which can be registered as patents, utility models or industrial designs, or as trademarks, the user shall refrain from such filing applications for such registration. In fact Welser has the sole right, granted free of charge, to apply for registration of such a property right. If Welser applies for registration of one of the abovementioned property rights, the user provides an assurance that no third-party rights will be infringed as a result, and indemnifies and holds Welser harmless in this regard.
- 11.4. In relation to clause 11.2, by way of clarification, it is hereby stated that the user may exclusively use the content that he or she has created for non-commercial, private purposes. Any other form of use requires the prior written consent of Welser.
- 11.5. Welser shall not be liable for the infringement of copyright, utility model, patent, trademark, design, image or name rights, or other industrial property, intellectual property or property rights, which the user commits during use of Creator. The user provides an assurance that he or she will not infringe any third-party rights due to the concepts/drawings/diagrams compiled in Creator and shall indemnify and hold Welser harmless in this regard.

## 12. Data protection

- 12.1. The user's data collected by Welser are exclusively processed by Welser or a commissioned third party to fulfill the intended use.
- 12.2. Furthermore, Welser uses the data collected from the user to send information on products from the Welser range, as well as to forward advertising if the user has granted consent hereto. The user can revoke his or her consent hereto at any time free of charge and without giving reasons, either by email to: [creator@welser.com](mailto:creator@welser.com) or by clicking on the relevant unsubscribe link sent with each email relating to information on products from the Welser range or to advertising.
- 12.3. Information on the processing of personal data in relation to the relevant contractual relationship concerning the use of Creator by the user shall be provided at <https://www.welser.com/datenschutz>.

## 13. Deliveries

- 13.1. Declarations made by Welser in relation to the contract may be delivered to the user in each case to the postal or email address most recently stored in his or her account. The user shall keep the relevant data up-to-date throughout the term of the contract. If the user breaches this obligation, declarations to the user from Welser, pursuant to this clause 13.1, delivered to the most recently disclosed postal and email address shall still be deemed effective if the user is a consumer. If the user has not stored a postal address, delivery to the last disclosed email address is sufficient. If the user is a contractor, delivery to the most recently stored email address is generally sufficient.

## **14. Applicable law and court of jurisdiction**

- 14.1. The court of jurisdiction for any disputes arising between Welser and a user who is a consumer under and/or in relation to a contractual relationship for the use of Creator shall conform to the statutory regulations. However, if the relevant contractual relationship is entered into between Welser and a user who is a contractor, any legal disputes arising under and/or in relation to the relevant contractual relationship shall exclusively be settled by the competent court for Vienna, Innere Stadt district.
- 14.2. These GCU and any contractual relationship effectively entered into hereunder concerning the use of Creators by a user are subject to Austrian law, in exclusion of its conflict of law rules. Any mandatory legal regulations in the country in which the user has his or her usual residence and which cannot be altered through choice of law shall not be affected, provided the user is a consumer.

## **15. Severability clause**

- 15.1. In the event of one or more the provisions of these GCU being or becoming invalid and/or unenforceable, this shall not affect the legal validity and enforceability of the remaining provisions hereof.
- 15.2. In respect of contractual relationships with contractors the legally invalid or unenforceable provision shall automatically be deemed replaced by a provision that is legally effective and valid and comes as close as possible in its economic effect to the replaced provision, as far as possible and where legally permitted. The same applies in the event of a regulatory loophole.

## **16. Customer service and contact**

- 16.1. Any queries or complaints about Creator can be made by email to [Mehr\\_Info\\_AT@welser.com](mailto:Mehr_Info_AT@welser.com) or by phone to the Welsers customer hotline on (+43 7487) 410 4172.

## 17. Alternative dispute resolution

- 17.1. Users who are consumers can contact the European Commission's online dispute resolution platform, available at <https://ec.europa.eu/odr> in case of any disputes arising about these GCU. However, Welsers shall not participate in any proceedings at an arbitration board and is not legally obliged to do so.