

General Provisions on Commissioned Data Processing

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1 Preamble

These General Provisions on Commissioned Data Processing regulates the obligations of the contracting parties in connection with the processing of personal data on behalf of the Client by the Contractor within the framework of the respective civil law service agreements concluded.

2 Definitions

The terms used in these General Provisions correspond to the definitions of the GDPR, unless otherwise specified. **Client's Data** shall exclusively mean personal data which, in connection with the Main Contract, has either been provided to the Contractor by the Client or collected by the Contractor exclusively for the Client on the Client's behalf. **Main Contract** means the service providing agreement under civil law which may result from master agreements or individual contracts or statements of work. **TOM** are technical and organizational measures. **Processing category** means the categorization of processing operations carried out by the Contractor on behalf of the Client, the definition of which is given in the Appendix TOM.

3 Object and Duration of Processing; Nature, Purpose and Means of Processing; Nature of Personal Data and Categories of Data Subjects

- 3.1 The respective civil law assignment by the Client is regulated in the Main Contract itself. Modalities (e.g. object, duration, type, purpose, means, categories of data) of data processing in the context of the Main Contract are set out in **the Agreement on Commissioned Data Processing**. The present General Provisions on Commissioned Data Processing including their **Appendix TOM** are an integral part of the Agreement on Commissioned Data Processing and form a contractual unit with the underlying Main Contract. For the sake of clarification, the parties note that the Agreement on Commissioned Data Processing may summarize similar operations (e.g. similar processing).
- 3.2 Within the scope of the performance of the Main Contract and in compliance with the provisions of the Agreement on Commissioned Data Processing, the Contractor shall be entitled to carry out all necessary processing steps with regard to the Client's Data (e.g. duplication of data for loss protection, creation of log files, intermediate files and work areas) insofar as this does not lead to a content modification of the Client's Data.

4 Obligation of the Contractor to Follow Instructions

- 4.1 The Contractor is a Processor as defined by Article 4 No. 8 GDPR and may only process the Client's Data within this Master DP Agreement and for the purposes of the Main Contract, including the Agreement on Commissioned Data Processing and the Client's instructions, unless it is legally obliged to process them. In this case, the Contractor shall notify the Client of these legal requirements in writing or by e-mail, unless the law in question prohibits such notification because of an important public interest.
- 4.2 **Instructions** are documented instructions of the Client directed at a specific processing of the Client's Data by the Contractor. They are initially determined by the Main Contract and the Agreement on Commissioned Data Processing and can then be changed, supplemented or replaced by the Client by a single instruction (**single instruction**). The instructions of the Client must always be given in writing; in exceptional cases verbal instructions given must be confirmed by the Client immediately in writing. The Contractor's activities on the basis of instructions that go beyond the contractually agreed scope of services of the Main Contract shall be treated as requests for changes.

- 4.3 Persons authorized to issue instructions on the part of the Client and persons authorized to receive instructions on the part of the Contractor shall be notified to the other party. The respective party shall immediately inform the other party of any change of this person in writing.
- 4.4 The Contractor shall not be obliged under substantive law to inspect instructions issued by the Client. However, if the Contractor is of the opinion that an instruction of the Client violates data protection provisions, he shall inform the Client without delay. In this respect, the Contractor shall be entitled to suspend the execution of the relevant instruction until the Client has confirmed or amended it (at least in writing). If the Client adheres to the instructions given and if the Contractor considers that the implementation of such instructions continues to require the Contractor to act unlawfully, the Contractor shall be entitled not to carry out the processing.

5 Duties of the Contractor

- 5.1 Within his area of responsibility, the Contractor shall meet TOM to adequately protect the Client's Data, which ensure the confidentiality, integrity, availability and resilience of the systems and services in connection with this order processing in the long term and have the ability to quickly restore the availability of the Client's Data and access to them in the event of a physical or technical incident. The data protection concept described in Appendix TOM (published at www.arvato-systems.com/TOM-en) represents the selection of the technical and organizational measures by the Contractor in accordance with the risk determined by him, taking into account the data protection objectives in accordance with the state of the art and in particular taking into account his own IT systems and processing methods. The Client has checked these data security measures offered by the Contractor in the Appendix TOM and assumes responsibility for ensuring that they are sufficient for Client's Data at the time of conclusion of the contract.
- 5.2 The Contractor reserves the right to change the TOM agreed upon, unless the level of protection laid down therein is undershot.
- 5.3 The Contractor has established a procedure to regularly review the effectiveness of the TOM and to ensure the security of the processing.
- 5.4 The Contractor ensures that the employees involved in processing the Client's Data and other persons working for the Contractor shall only process these data in accordance with the instructions of the Client, unless they are legally obliged to process them. The Contractor further ensures that the persons employed by him to process the Client's Data have committed themselves to confidentiality or are subject to an appropriate statutory duty of confidentiality. This obligation continues to exist even after termination of the contract.
- 5.5 The Contractor shall inform the Client without delay if he becomes aware of any violations of the protection of Client's Data. In this case, the Contractor may temporarily and at his own discretion take appropriate measures within his area of responsibility to protect the Client's Data and to mitigate possible adverse consequences. The Contractor shall inform the Client as soon as possible of any measures taken by him.
- 5.6 The contact person of the Contractor for any data protection questions that may arise is named in the Agreement on Commissioned Data Processing..
- 5.7 The Contractor shall keep a list of processing activities in accordance with Article 30 para. 2 GDPR. He is authorized to make the list concerning the Agreement on Commissioned Data Processing available to a supervisory authority at its request or the Client can request this

list from the Contractor if a supervisory authority so requests or if the Client carries out audits or certifications.

5.8 The Contractor shall assist the Client, taking into account the nature of the processing and the information available to it, in complying with the obligations of the Client set out in Articles 32 to 36 GDPR.

5.9 Should the Client's Data be endangered by seizure or confiscation, by insolvency or composition proceedings or by other events or measures of third parties, the Client shall be informed immediately by the Contractor, unless the law in question prohibits such notification due to an important public interest. The Contractor shall immediately inform the third party that the sovereignty and "ownership of the data" lies solely with the Client.

6 Duties of the Client

6.1 The Client is the controller in the sense of the GDPR. Within the framework of the Agreement on Commissioned Data Processing, therefore the Client shall bear undivided responsibility for compliance with the statutory provisions of the data protection laws, in particular for the legality of the transfer of data to the Contractor and for the legality of data processing. The Client is responsible for fulfilling the obligations set out in Articles 32 to 36 of the GDPR.

6.2 The Client shall inform the Contractor immediately and completely if he detects errors or irregularities with regard to data protection regulations during the examination of the order results.

6.3 The contact person of the Client for data protection issues is named in the Agreement on Commissioned Data Processing.

6.4 The Client shall provide the Contractor with all information required by the Contractor for the maintenance of the record of categories of processing activities in accordance with Article 30 para. 2 GDPR.

6.5 The Client shall be responsible for evaluating and assessment of the effectiveness of the TOM agreed in order to ensure the security of the processing. Insofar as the Client does not consider the TOM to be sufficient to ensure the security of the processing (e.g. new risk assessment of the Client), the parties shall agree on corresponding changes and their commercial effects and implement them on the basis of a corresponding written change agreement (if the parties have agreed on a change procedure in the Main Contract, this shall apply).

6.6 In the event of a claim against the Contractor by a data subject or a body named in Article 80 GDPR with regard to any claims pursuant to Articles 79 or 82 GDPR, the Client undertakes to support the Contractor in defending the claims. In this context, the Contractor shall be entitled to disclose details of the Agreement on Commissioned Data Processing, data processing and instructions of the Client to third parties for the purpose of defending these claims or for exculpation pursuant to Article 82 para. 3 GDPR.

7 Protection of Rights of Data Subjects

7.1 With regard to the Agreement of Commissioned Data Processing, the Client is responsible for safeguarding the rights of the data subjects provided for in Chapter III of the GDPR.

Insofar as the Contractor's cooperation is necessary for the protection of the rights of the data subjects (in particular with regard to information request, correction, blocking or erasure) by the Client, the Contractor shall support the Client upon request. The same applies to the provision of information.

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- 7.2 If a data subject contacts the Contractor with the assertion of data protection rights regulated in the GDPR, the Contractor shall inform the Client if it is possible to assign the inquiry of the data subject to the Client according to the information provided by the data subject.

8 Subcontractors

- 8.1 The Client agrees that the Contractor may involve third parties ("subcontractors") in the performance of its contractually agreed services for the Client and the related processing of data, insofar as the requirements of Paragraph 8.2 are ensured.

Approval will be granted for the involvement of a company affiliated with the Contractor pursuant to §§ 15ff. AktG within the Arvato Systems Group (listed at www.arvato-systems.com/Subprocessors).

The subcontractors used for the Client at the time of the conclusion of the contract are named in the Agreement of Commissioned Data Processing.

The Contractor shall inform the Client of any further subcontractors and any intended commissions of further subcontractors. Information on subcontractors appointed by the Contractor shall be sent to the person authorized to issue instructions (see Agreement of Commissioned Data Processing") of the Client or via publication on the website listed in the Agreement of Commissioned Data Processing.

The Client may object to changes of subcontractors for important data protection reasons to the person authorized to receive instructions (at least in writing). If no objection is made within a reasonable period of time, consent to the amendment shall be deemed to have been given. If there is an important data protection reason and an amicable solution between the parties is not possible, the Contractor may terminate the Main Contract and the Agreement of Commissioned Data Processing for an important reason.

- 8.2 The Contractor shall subject the subcontractors commissioned by him to the same contractual data protection obligations to which he himself is subject in accordance with the Agreement of Commissioned Data Processing.

- 8.3 If the Contractor uses further subcontractors outside the EU or the EEA, this shall be done in consideration of Art. 44 et seq. of the GDPR, in particular on the basis of EU standard contracts (e.g. in the form of Processor-to-Processor EU standard contracts). Alternatively, the Client authorizes the Contractor to conclude the EU Standard Contractual Clauses Controller to Processor on behalf of the Client with the subcontractor in such a way that either (i) the Client joins EU Standard Contractual Clauses existing between the subcontractor (as Processor) and the Contractor (as Controller) and acquires the same rights as the Contractor under the EU Standard Contractual Clauses, or (ii) the Client concludes EU Standard Contractual Clauses directly with the subcontractor and the Contractor enters into it, so that the latter acquires the same rights in this respect as the Client under the EU Standard Contractual Clauses.

- 8.4 If the subcontractor does not comply with his data protection obligations, the Contractor shall be liable to the Client for compliance with the obligations of that subcontractor as for his own fault.

9 Evidence from the Contractor, Inspections

- 9.1 The Contractor shall prove to the Client compliance with the obligations laid down in these General Provisions of Commissioned Data Processing by submitting appropriate certificates (e.g. ISO 27001) or by submitting/performing a self-audit or a self-assessment.

9.2 If, in individual cases, further inspections or checks required under data protection law should be necessary by the Client or an independent external auditor commissioned by the Client, whose name is communicated to the Contractor in good time in advance, (e.g. if the Client has reasonable doubts about a self-audit submitted by the Contractor or in case of a personal data breach), these will be carried out in the presence of an employee of the Contractor during normal business hours and without disrupting the course of business at the contractor's premises after registration, taking into account an appropriate lead time (which is usually 4 weeks; unless faster execution is required for data protection reasons). The Contractor may make these inspections or checks dependent on the signing of an appropriate nondisclosure agreement with regard to the data of other Clients and the technical and organizational measures set up. If the inspector commissioned by the Client is in a competitive relationship with the Contractor or its subcontractors, the Contractor can refuse an inspection by the inspector.

The Client may demand an audit to be carried out in accordance with this clause even without a concrete data protection reason. The Client may audit once within a 12-month period, unless mandatory data protection law requires more frequent audits. If more far-reaching regulations for carrying out audits between the parties have been agreed (audit guideline), these must also be taken into account.

9.3 The Client shall provide the Contractor with a copy of the complete audit report in digital form. In particular, the Contractor may also provide the audit report to its subcontractors.

10 Return and Deletion of Data upon Termination of Contract

10.1 After termination of the Main Contract, the Contractor shall, if technically possible and commissioned by the Client, surrender the Client's Data. Electronically stored data are to be released on request and instruction in a format customary in the market on data carriers, whereby the Client bears the shipping risk, or are to be transmitted in encrypted form online to the Client, whereby the Client bears the transmission risk.

10.2 The Contractor shall delete all electronically stored data of the Client or, in the case of backups or log files, shall ensure that data processing is restricted until the time of deletion. The Contractor shall confirm the deletion in writing to the Client at Client's request.

10.3 Data of the Client which are not stored in electronic form (e.g. data on CDs, paper documents) and which the Client does not wish to be surrendered will be destroyed by the Contractor in accordance with data protection regulations.

10.4 The obligation to surrender or delete does not exist if the Contractor is legally obliged to store or otherwise obliged to store this data.

10.5 The Client must inform the Contractor of the request to delete or surrender the Client's Data in writing at the latest by the time of completion. If this does not occur, the Contractor will delete all data of the Client after termination of the contract, as far as there are no legal obligations of the Contractor for the storage of this data.

10.6 If the Client wishes the Client's Data to be stored beyond the end of the contract, this requires a separate agreement between the parties. The parties will agree on the respective services and commercial implications and will specify them in a corresponding written amendment agreement (if the parties have agreed on an amendment procedure in the Main Contract, this shall apply).

11 Control Rights of Supervisory Authorities or other Sovereign Supervisory Authorities of the Client; Cooperation with Supervisory Authorities; Legal Disputes

- 11.1 Should a data protection supervisory authority or any other sovereign supervisory authority of the Client carry out an inspection of the Contractor, the provision of Clause 9.2 of the General Provisions on Commissioned Data Processing shall apply mutatis mutandis. In this case, it is not necessary to sign a confidentiality agreement.
- 11.2 The contracting parties shall inform each other immediately of all official enquiries/rulings and procedures, all measures taken by one of the bodies mentioned in Article 80 GDPR (such as complaints, warnings, assertion of claims) and all threatened or ongoing court proceedings relating to the cooperation regulated in these General Provisions on Commissioned Data Processing, shall cooperate closely in connection with these enquiries, orders, measures or procedures and shall make all necessary documents and information available to each other. In this context, each party shall be entitled to disclose all information and documents relating to these General Provisions on Commissioned Data Processing, including details of data processing, to the supervisory authority responsible for them or to other third parties involved in the case to the extent required from the party's point of view.

12 Final Provisions

- 12.1 If, according to this agreement, the Contractor has to carry out support actions or incur expenses which are not attributable to a misconduct of the Contractor (e.g. individual instructions, expenses within the scope of rights of affected parties, audits), these shall be treated as requests for changes in accordance with the provisions of the Main Contract.
- 12.2 If no deviating agreements have been made in the Agreement on Commissioned Data Processing, the agreements made between the parties in the Main Contract shall apply. Should individual parts of the Agreement on Commissioned Data Processing be invalid, this shall not affect the validity of the remaining Agreement on Commissioned Data Processing.
- 12.3 The parties agree on the validity of German law for the Agreement on Commissioned Data Processing to the exclusion of the provisions of international private law. The exclusive place of jurisdiction shall be that of the Main Contract.

13 Appendices

The following Appendix is part of these General Provisions on Commissioned Data Processing

Appendix TOM published at www.arvato-systems.com/TOM-en