

General Provisions on Commissioned Data Processing

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General Provisions on Commissioned Data Processing

1 Preamble

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

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 that has either been provided to the Contractor by the Client in connection with the Main Contract or has been collected by the Contractor exclusively for the Client on its 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 set out in the Appendix TOM.

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

- The respective assignment by the Client und civil law is regulated in the Main Contract itself. Modalities (e.g. object, duration, type, purpose, means, categories of data) of the commissioned processing in the context of the Main Contract are set out in **the Agreement on Commissioned Data Processing**. These 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, Parties state that the Agreement on Commissioned Data Processing may also combine similar operations. Insofar as the processing for the Main Contract constitutes a new processing within the meaning of the GDPR, a further agreement on Commissioned Data Processing shall be concluded accordingly.
- 3.1 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 regarding to the Client's Data (e.g. duplication of data for loss protection, creating log files)) insofar as this does not lead to a modification of the content of the Client's Data.

4 Obligations of the Contractor to Follow Instructions

- 4.1 The Contractor is a processor within the meaning of Article 4 No. 8 of the GDPR and may only process the Client's Data within the scope of 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 (text form), unless the relevant law prohibits such notification due to an important public interest.
- 4.2 **Instructions** are the Client's documented instructions of directed at a specific processing of the Client's Data by the Contractor. They are initially defined by the Main Contract and the Agreement on Commissioned Data Processing and may subsequently be amended, supplemented or replaced by the Client by means of an individual instruction (**individual instruction**). The Client's instructions must always be issued in text form; in exceptional cases oral

instructions must be confirmed by the Client in text form without delay. In deviation from this, instructions may also be issued by the Client via the use of technical support services provided and agreed for this purpose (e.g., administration consoles, portals). Activities of the Contractor based on instructions that go beyond the contractually agreed scope of services of the Main Contract shall be treated as a change request.

- 4.3 Persons authorized to give instructions on the part of the Client and persons authorized to receive on the part of the Contractor shall be notified to the respective other party. The respective party shall immediately inform the other party in text form of a change of this person.
- 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, it shall inform the Client without delay. In this respect, the Contractor shall be entitled to suspend the implementation of the relevant instruction until the Client has confirmed or amended it (at least in text form). If the Client adheres to the issued instruction and, from the Contractor's point of view, its implementation still requires it to act unlawfully, the Contractor shall be entitled not to carry out the processing.

5 Duties of the Contractor

- 5.1 The Contractor shall meet TOM within its area of responsibility for the adequate protection of the Client's Data, which ensure the confidentiality, integrity, availability and resilience of the systems and services in connection with this commissioned processing on a permanent basis, as well as the ability to quickly restore the availability of the personal data and access to them in the event of a physical or technical incident. The data protection concept described in the **Appendix TOM** (published at www.arvato-systems.de/TOM-en) sets out in detail the selection of technical and organizational measures by the Contractor to suit the risk it has identified, taking into account the protection objectives in accordance with the state of the art and with particular regard to its own IT systems and processing procedures used. The Client has reviewed these data security measures offered by the Contractor in the Appendix TOM and assumes responsibility that these measures are sufficient for Client's Data at the time of conclusion of the contract..
- 5.2 The Contractor reserves the right to amend the TOMs unless the level of protection laid down therein is not met.
- 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 shall ensure that the employees involved in the processing of the Client's Data and other persons working for the Contractor process this data only in accordance with the Client's instructions, unless they are legally obliged to process it. The Contractor shall further ensure that the persons employed by it to process the Client's Data have committed themselves to confidentiality or are subject to an appropriate statutory duty of confidentiality. This obligation shall continue to exist after termination of the contract.
- 5.5 The Contractor shall inform the Client without delay if it becomes aware of any violations of the protection of the Client's Data. In this case, the Contractor may, on a temporary basis and at its own discretion, take appropriate measures within its area of responsibility to protect the Client's Data and to mitigate any possible adverse consequences. The Contractor shall inform the Client of any measures it has taken as soon as possible.
- 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..

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- 5.7 The Contractor shall maintain a register of processing activities pursuant to Article 30(2) of the GDPR.
- 5.8 The Contractor shall assist the Client upon appropriate instruction, considering the type of processing and the information available to it, in complying with the Client's obligations regulated in Articles 32 to 36 of the GDPR.
- 5.9 Should the Client's Data at the Contractor be endangered by attachment or seizure, by insolvency or composition proceedings or by other events or measures of third parties, the Contractor shall immediately inform the Client thereof, unless the relevant law prohibits such notification due to an important public interest. The Contractor shall inform the third party without delay that sovereignty and "ownership of the data" lie solely with the Client.

6 Duties of the Client

- 6.1 The Client is the controller within the meaning of the GDPR. As such, it is responsible for the fulfilment of the obligations regulated in Articles 32 to 36 of the GDPR.
- 6.2 The Client shall inform the Contractor immediately and in full if it discovers errors or irregularities with regard to data protection provisions when checking the results of the order.
- 6.3 The contact person at the Client for any data protection issues that may arise is named in the Agreement on Commissioned Data Processing.
- 6.4 The Client shall, upon instruction, provide the Contractor with all information required by the Contractor to maintain the directory pursuant to Article 30 (2) of the GDPR.
- 6.5 The Client shall be responsible for evaluating and assessing the effectiveness of the TOMs taken to ensure the security of the Processing. Insofar as the TOMs are not sufficient from his point of view 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 amendment agreement (insofar as the Parties have agreed on an amendment 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 referred to in Art. 80 GDPR with regard to any claims pursuant to Art. 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, the data processing and instructions of the Client to third parties for the purpose of defending these claims or for exculpation pursuant to Art. 82 (3) of the GDPR.

7 Protection of Data Subject's Rights

- 7.1 With regard to this Agreement on Commissioned Data Processing, the Client shall be responsible for safeguarding the data subject rights provided for under Chapter III of the GDPR. Insofar as the cooperation of the Contractor is necessary for the protection of data subject rights by the Client, the Contractor shall support the Client upon instruction within the scope of the existing and economically reasonable possibilities.
- 7.2 If a data subject contacts the Contractor with the assertion of data subject rights regulated in the GDPR, the Contractor shall, if it is possible for it to allocate the request to the Client by economically justifiable means, forward the request to the Client or refer the data subject to the assertion of its data subject rights against the Controller.

8 Subcontractors

8.1 The Client agrees that the Contractor may engage third parties ("subcontractors") for the provision of its contractually agreed services for the Client and the processing of data in connection therewith, insofar as the requirements set out in Para. 8.2 and 8.3 are guaranteed.

The subcontractors engaged for the Client at the time of the conclusion of the contract are named in the Agreement of Commissioned Data Processing and are approved as further subcontractors with the conclusion of the contract.

The Contractor shall inform the Client about further subcontractors as well as intended commissioning of further subcontractors. Information about subcontractors engaged by the Contractor shall be provided to the person authorized to issue instructions of the Client (see Agreement of Commissioned Data Processing") or via publication on the website listed in the Agreement of Commissioned Data Processing. The Contractor shall provide the Client with a registration option to be informed about changes to the listed website.

The Client may object to changes of the subcontractors for important data protection reasons to the person authorized to receive instructions (at least in text form). If no objection is raised within a reasonable period of time, the consent to the change shall be deemed granted. If there is an important reason under data protection law and if it is not possible for the parties to find a mutually agreeable solution, the Contractor may terminate the Main Contract and the associated Agreement of Commissioned Data Processing for an important reason.

8.2 The Contractor shall subject the subcontractors engaged by it to the same contractual data protection obligations to which it itself is subject under 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 adequacy decisions and EU standard contractual clauses (e.g. in the form of Processor-to-Processor EU standard contracts).

8.4 If the subcontractor fails to comply with its data protection obligations, the Contractor shall be liable to the Client for compliance with the obligations of that subcontractor as for its own fault.

9 Evidence of the Contractor, Inspections

9.1 The Contractor shall provide the Client with evidence of compliance with the obligations set out in this General Provisions on Data Processing by submitting corresponding certificates (e.g. in accordance with ISO/IEC 27001) or submitting/carrying out a self-audit or self-assessment.

9.2 If, in individual cases, inspections or reviews by the Client or an independent external auditor commissioned by the Client are required in accordance with data protection law (e.g. in the event of justified doubts about a self-audit submitted by the Contractor or the violation of the protection of personal data), these shall be carried out in the presence of an employee of the Contractor during normal business hours and without disrupting business operations at the Contractor's premises following notification and taking into account a reasonable lead time (which is usually 4 weeks). The Contractor may make these inspections or reviews dependent on the signing of an appropriate nondisclosure agreement with regard to the data of other customers and the technical and organizational measures put in place. If the auditor commissioned by the Client is in a competitive relationship with the Contractor or its subcontractor, the Contractor may refuse an inspection by the auditor.

The Client may request the performance of an audit in accordance with this clause even without a specific data protection reason. The Client may audit once within a 12-month period, unless mandatory data protection law requires more frequent audits. If further regulations on the performance of audits have been agreed between the parties (audit guideline), these shall also be taken into account.

9.3 The Client shall provide the Contractor with a copy of the complete audit report in digital form.

10 Return and Deletion of Data upon Termination of the Contract

10.1 After termination of the Main Contract, the Contractor shall, if technically possible and instructed by the Client, hand over the Client's Data. Electronically stored data shall be handed over upon request and instruction in a format customary in the market on data carriers, whereby the Client shall bear the shipping risk, or shall be transmitted to the Client online in encrypted form, whereby the Client shall bear 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, ensure a restriction of data processing until the time of deletion. The Contractor shall confirm the deletion to the Client in text form at the Client's request.

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

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

10.5 At the latest by the termination of the relevant Main Contract, the Client shall request the Contractor to delete or hand over the associated data at least in text form. If this does not happen, the Contractor shall delete all data of the Client after termination of the Main Contract, insofar as no legal obligations of the Contractor to retain this data exist.

10.6 Insofar as the Client wishes the Client's Data to be stored beyond the end of the contract, this shall require a separate agreement between the parties. The parties shall coordinate the corresponding services and commercial effects and set them out in a corresponding written amendment agreement (insofar as the parties have agreed an amendment procedure in the Main Contract, this shall apply). Any regulations on the handling of the Client's Data under the Main Contract (e.g. exit regulations) shall take precedence over the regulations under this clause.

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

11.1 The Parties shall inform each other without undue delay of all official inquiries/orders and proceedings, all measures taken by any of the bodies referred to in Art. 80 GDPR (such as complaints, warnings, assertion of claims) as well as all threatened or ongoing legal proceedings which have as their subject matter the cooperation governed by this Agreement on Commissioned Data Processing, shall cooperate closely in connection with such enquiries, orders, measures or proceedings and shall provide each other with all necessary documents and information. In this context, each Party shall be entitled to disclose all information and documents relating to this Agreement on Commissioned on Data Processing to the supervisory authority responsible for it or other third parties involved in the proceedings, to the extent

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that this is necessary from the Party's point of view (including the details of the data processing).

12 Final Provisions

- 12.1 Insofar as the Contractor is required to perform support activities under this Agreement or incurs expenses which are not attributable to any misconduct on the part of the Contractor (e.g., individual instructions, expenses within the scope of data subject rights, audits), these shall be treated as change requests in accordance with the provisions of the Main Contract.
- 12.2 Unless otherwise agreed 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 rest of the Agreement on Commissioned Data Processing.
- 12.3 The parties agree that this Agreement on Commissioned Data Processing shall be governed by German law to the exclusion of the provisions of international private law. The exclusive place of jurisdiction shall be determined by that of the Main Contract with which the Agreement on Commissioned Data Processing forms a legal unit.

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