

# **Conditions for commissioned processing**

according to EU Data Protection Regulation (DS-GVO)

Contractor: PRODATA GMBH, Karlsruhe

Client: Client pursuant to the contract (or offer with acceptance of offer or order with confirmation of order or order with confirmation of order or other legal instrument under Union law) in which reference is made to these Terms and Conditions.

## **1. Subject**

(a) The contractor processes personal data on behalf of the client. This includes all activities which the Contractor performs in accordance with the service descriptions and the respective contractual agreements with the Client (contract or offer with offer acceptance or order with order confirmation or order with order confirmation or another legal instrument under Union law, as well as PRODATA terms and conditions) and which constitute commissioned processing. This shall also apply if the service descriptions and the respective contractual agreements do not expressly refer to these terms and conditions for commissioned processing.

(b) The service descriptions in the order are part of this agreement.

(c) These terms and conditions for commissioned processing contain regulations and agreements for further contractual purposes in clause 16. The respective service description may contain provisions and agreements for further contractual purposes.

(d) In the event of contradictions between a service description and these terms and conditions for commissioned processing, the service description shall take precedence as the more specific provision. The terms and conditions of PRODATA shall apply to changes in the service descriptions.

(e) The above paragraph shall also apply to the respective contractual agreements between the Contractor and the Client, which shall apply instead of or in addition to the specifications.

(f) In all other respects, the provisions of the Terms and Conditions of PRODATA shall apply subordinately.

## **2. Duration of the processing**

(a) Processing shall be carried out for an unlimited period of time, unless otherwise agreed in the service descriptions and the respective contractual agreements. The notice periods regulated in the respective contractual agreements remain unaffected.

## **3. Type and purpose of the processing**

(a) The type of processing includes all types of processing within the meaning of the GDPR.

(b) The purposes of the processing are all purposes necessary for the provision of the contractually agreed service and all further contractual purposes agreed in clause 16 of these terms and conditions for commissioned processing and in the respective service description.

## **4. Type of personal data and categories of data subjects**

(a) Art der personenbezogenen Daten sind alle Arten personenbezogener Daten, die der Auftragnehmer im Auftrag des Auftraggebers verarbeitet.

(b) Kategorien betroffener Personen sind insbesondere

- Kunden
- Interessenten
- Abonnenten
- Lieferanten
- Handelsvertreter

- Contact persons
- Employees and business partners/clients of the client
- Employees, family members and business partners of the client business partner/client,
- other persons, if applicable also as consumers, insofar as they are users of a contractor service.

## 5. Obligations and rights of the principal

(a) Within the scope of these terms and conditions for commissioned processing, the Client shall be solely responsible for compliance with the statutory provisions of the data protection laws, in particular for the lawfulness of the transfer of data to the Contractor as well as for the lawfulness of the processing ("Controller" within the meaning of Art. 4 No. 7 DS-GVO). This also applies with regard to the purposes and means of the processing and the description of the data concerned regulated in this agreement.

(b) The Contractor confirms that it has appointed a company data protection officer.

(c) Further obligations and rights of the Client arise from the following provisions of these Terms and Conditions on Commissioned Processing and the GDPR as well as the associated statutory provisions.

## 6. Duty to inform

(a) The statutory provisions of Art. 33 DSGVO and Art. 34 DSGVO shall take precedence over other contractual provisions. In these cases, the contractor shall first inform the client, who is responsible for the information obligations towards third parties, without delay. Within the scope of official instructions and orders, the contractor is entitled to inform authorities and third parties directly.

(b) Insofar as a data subject should contact the contractor directly for the purpose of correcting or deleting his/her data, the contractor shall forward this request to the principal without delay. The contractor shall support the client against payment in the event of enquiries and claims by data subjects.

## 7. Processing on documented instruction

(a) The Contractor - and any person subordinate to it - may only process the personal data within the scope of the service descriptions and the respective contractual agreements between the Contractor and the Client and the Client's instructions, unless there is an exceptional case within the meaning of Article 28 (3) sentence 2 lit.a DS-GVO. The Contractor shall accept instructions from the Client in written form and via the electronic formats offered by the Contractor for this purpose. Verbal instructions shall be confirmed by the Client without delay in writing or in an electronic format offered by the Contractor for this purpose.

(b) The Contractor shall inform the Client without delay if it is of the opinion that an instruction violates applicable laws. The Contractor may suspend the implementation of the instruction until it has been confirmed or amended by the Client.

(c) If the Client's instructions are not included in the contractually agreed scope of services, they shall be treated as a request for a change in services. In the case of proposed changes, the Contractor shall inform the Client of the effects on the agreed services, in particular the possibility of providing the services, deadlines and remuneration. If the Contractor cannot reasonably be expected to implement the instruction, the Contractor shall be entitled to terminate the processing. Otherwise, the service descriptions and respective contractual agreements shall apply.

## 8. Obligation of confidentiality

(a) The contractor shall ensure that the persons authorised to process the personal data have committed themselves to confidentiality or are subject to an appropriate statutory duty of confidentiality.

## 9. Measures for the safety of processing

(a) The contractor shall organise the internal organisation within its area of responsibility in such a way that appropriate technical and organisational measures are implemented in such a way that the processing is carried out in accordance with the requirements of the GDPR and ensures the protection of the rights and freedoms of the data subject.

The contractor shall take all measures required in accordance with Art. 32 of the GDPR within its area of responsibility.

(b) The Contractor shall send the currently applicable technical and organisational measures to the Client at any time upon request.

(c) The Contractor reserves the right to change the technical and organisational measures taken, provided that the level of protection according to the GDPR and the security level of the specified measures are not undercut.

(d) Data shall be backed up as part of the data backup concept. Backup copies may be kept in the safe deposit box for an unlimited period of time and protected against unauthorised access.

(e) Documentation which serves as proof of the orderly and proper data processing shall be kept by the Contractor beyond the end of the contract in accordance with the respective retention periods. He may hand them over to the Client at the end of the contract to relieve him of the burden.

## **10. Other processors**

(a) To the extent that subcontractors are to be involved in the processing or use of personal data of the principal, this shall be approved if the following conditions are met:

- The contractor may use affiliated companies as well as other subcontractors for the performance of the contract with the due diligence required by law, while complying with its obligations.
- The contractor shall structure the contractual agreements with the subcontractor(s) in such a way that they comply with the data protection provisions in the contractual relationship between the client and the contractor.
- In the event of subcontracting, the Client shall be granted rights of control and inspection in accordance with this Agreement and the statutory provisions at the subcontractor. This shall also include the Client's right to receive information from the Contractor upon written request about the essential content of the contract and the implementation of the data protection-relevant obligations in the subcontracting relationship, if necessary by inspecting the relevant contractual documents.
- Upon request, the Contractor shall inform the Client which subcontractors the Contractor has engaged for data collection, processing and/or use and which services they perform for the Contractor. The contractor shall always inform the client of any intended change with regard to the involvement or replacement of further processors, giving the client the opportunity to object to such changes.
- Subcontracting relationships within the meaning of this provision do not include services which the contractor uses from third parties as an ancillary service to support the performance of the contract. These include, for example, telecommunication services, maintenance and user service, cleaning staff, auditors or the disposal of data carriers. However, the contractor is obliged to make appropriate and legally compliant contractual agreements and to take control measures to ensure the protection and security of the client's data, even in the case of ancillary services contracted out.

## **11. Support of the responsible person (client) with regard to data subject rights**

(a) In its duty to respond to requests for the exercise of the data subject's rights referred to in Chapter III of the GDPR, the contractor shall support the client with appropriate technical and organisational measures where possible.

(b) The contractor shall be entitled to demand reasonable remuneration from the client for these services.

## **12. Supporting the controller (principal) with regard to the security of personal data**

(a) The contractor shall, taking into account the nature of the processing and the information available to it, assist the client in complying with the obligations referred to in Articles 32 to 36 of the GDPR.

(b) The contractor shall be entitled to demand reasonable remuneration from the client for these services.

### **13. Handling of the data after completion of the provision of the processing services**

(a) Upon completion of the provision of the Processing Services, the Contractor shall, at the Client's option, either delete all Personal Data or return them to the Client, unless there is an obligation to store the Personal Data under Union or German law or under 99(d) or unless otherwise specified in the Service Specifications and the respective contractual agreements.

### **14. Information and verifications to demonstrate compliance with the obligations**

(a) The Contractor shall provide the Client, upon request, with all information necessary to demonstrate compliance with the obligations set out in Art. 28 GDPR and shall enable and cooperate in audits - including inspections - carried out by the Client or another auditor appointed by the Client. If there is a possibility of confidential information becoming known in this context, the contractor is entitled to demand a declaration of confidentiality from the client and the auditor commissioned by the client.

(b) The Principal's right of inspection aims to verify compliance with the obligations incumbent on a Processor pursuant to the GDPR and this Agreement. The evidence shall primarily be provided by independent audit reports and certifications. If the Principal asserts justified doubts on the basis of factual indications that these audit reports or certifications are insufficient or inaccurate, or if special incidents within the meaning of Article 33 (1) of the GDPR in connection with the performance of the Principal's commissioned processing justify this, it may conduct on-site inspections. If such on-site inspections are carried out, they shall be designed as random inspections of the areas relevant for the performance of the commissioned processing and the Contractor shall be notified in writing in good time in advance, as a rule (exception e.g. in the case of special incidents), however, at least 14 calendar days. The same shall apply to on-site inspections without cause. The exercise of the right of inspection must not unduly disturb the business operations of the contractor or be abusive.

(c) The Contractor is entitled to demand reasonable remuneration from the Client for these services.

### **15. Mutual support**

(a) In the case of Art. 82 GDPR, the parties undertake to assist each other and to help clarify the underlying facts.

### **16. Agreement on further contractual purposes**

(a) The Contractor shall be entitled to process the personal data covered by these agreements or conditions for the purpose of troubleshooting the specific Contractor products and services necessary for the performance of the contract in which the data are stored.

(b) The Contractor shall be entitled to process the personal data covered by these agreements or conditions for the purpose of developing new or further developing existing Contractor Products and Services in an appropriately secured environment. The Contractor shall also take into account in this processing process that data deleted or instructed for deletion by the Client shall no longer be processed.

### **17. Form requirement**

(a) Amendments and supplements to this Annex and all its components - including any representations by the Contractor - must be made in writing in accordance with the GDPR, which may also be in an electronic format, and of the express reference to the fact that it is an amendment or supplement to these Terms and Conditions. This also applies to the waiver of this formal requirement.

### **18. Commencement of validity, effect of terminations**

(a) These Conditions shall apply immediately upon the conclusion of any contract (or offer with acceptance of offer or order with confirmation of order or purchase order with confirmation of order or other legal instrument under Union law) in which reference is made to these Conditions.

(b) These terms and conditions shall not automatically terminate upon termination of all service descriptions and contractual agreements, but shall require express reference in the termination notice that it is also a termination of these terms and conditions for commissioned processing.

## **19. Cancellation of previous agreements and conditions**

(a) Simultaneously with the commencement of the validity of these terms and conditions for commissioned processing, all existing agreements and terms and conditions for commissioned data processing or commissioned processing between the Client (to the extent that the Client is also the Client there) and the Contractor (to the extent that the Contractor is also the Contractor there) shall be cancelled and replaced by these terms and conditions.

## **20. References to the GDPR**

(a) The references to the GDPR contained in this Agreement apply to the GDPR in its current version or any successor regulations.

## **21. Severability clause**

(a) Should individual provisions of these terms and conditions prove to be invalid, this shall not affect the validity of the remaining provisions. The invalid provision shall be replaced by such provision as the parties would have made if they had had the invalidity of the respective point in mind when concluding the contract (or the offer with offer acceptance or the order with order confirmation or the order with order confirmation or the other legal instrument under Union law) in which reference is made to these Terms and Conditions. To the extent that these Conditions contain an unintended omission, such omission shall be replaced by a provision which the parties would have made if they had been aware of the need to regulate the relevant point when concluding the contract (or the offer with acceptance of offer or the order with confirmation of order or the order with confirmation of order or the other legal instrument under Union law).

(b)