

General Terms and Conditions of DIG GmbH

§1 Applicability of Terms

Unless otherwise agreed, the following terms of DIG GmbH (hereafter DIG) are applicable in all services provided to the contractual partner. They are also valid regarding future business, even when no explicit reference is made thereto. Opposing general terms and conditions of the contractual partner are valid only when expressly accepted by DIG in writing.

§2 Object of Contract/ Rights of Use

(1) General

DIG transfers to the contractual partner a non-exclusive and non-transferable right to use the contractually stipulated applications and systems for the duration of the contract and to the agreed extent. Intellectual property rights arising from the provision of services remain the exclusive property of DIG. Should these intellectual property rights be created in conjunction with a contractual partner, it is the right of DIG to offer these solutions also to other customers and to use them, without having to pay compensation.

(2) Improvement/ Extension of the DIG Platform

Changes in the technical framework and further development necessitate regular minor releases of the system (e.g. from 2.49 to 2.50). This does not mean, however, that the contractor is obliged to carry out further development. In the case of major release (e.g. from 2.49 to 3.0) with related new functions, the contractor will inform the client in advance and will offer a major release update for a corresponding fee. The client is, however, under no obligation to switch to a newer version. Minor releases which serve for overall improvement without any effect on the original range of function may be carried out with prior notice from the contractor. Clients which lag behind by more than 5 major releases within 36 months will be required to pay a surcharge of 50% for help-desk support and 25% for monthly user fees. Bug fixes and functions which already exist in higher versions will not be corrected in older versions. The client is not entitled to adaptations of the DIG platform made necessary by legislative change affecting the client. In such cases, adaptations will only be carried out when expressly commissioned (Change Request Rule) and against the corresponding extra fee.

§ 3 Obligations of the Contractual Partner

The contractual partner will fulfil the obligations associated with the provision and execution of service. He will in particular

- pay the agreed prices on time.
- safeguard the user and access authorizations assigned to him and/ or the users from access by third parties and not give these authorizations to unauthorised users;

- indemnify and hold harmless DIG from all third-party claims that are based on the illegal use of the DIG solution by the contractual partner or with his consent, or which arise, in particular, from litigation involving data protection, copyright, or other laws in conjunction with the use of the DIG solution. Should the contractual partner be aware or be in the position to recognise that a violation of this nature is about to occur, it is his duty to notify DIG of this without undue delay;
- notify DIG without undue delay of any change in person (universal or single succession), change in address, name or legal form of the company, or a change in relation to shareholders.

§4 Utilisation in Breach of Agreement

DIG is entitled to block access to the DIG solution and its data in the case of violation by the contractual partner or a user authorised by him of material obligations laid down in the contract. Access will then be unblocked only when the violation against the material obligation in question is permanently eliminated or when the risk of a repeat breach can be ruled out reliably by way of a judicially executable cease-and-desist declaration, under reasonable penalty, to DIG. The contractual partner is obliged, irrespective of the access block, to pay the agreed monthly fee. In the case of unlawful violation of the specified obligations through a user, the contractual partner undertakes to provide DIG, on demand and immediately, with all the information needed to assert the assigned claims against the user, particularly the user's name and address.

§5 Payment and Methods of Payment

(1) Terms of Payment

The period allowed for payment is 14 days without deduction. Billing for one-off charges will be conducted following the provision of service or according to the agreed payment plan. Billing for monthly user fees will be conducted retroactively on the last working day of each month and begins on the day of service being workably provided.

(2) Default

In the case of default, DIG is entitled to add an arrears fee of an appropriate amount, in any case at least € 30,00 plus VAT to the bill. The right of DIG to statutory default interest as well as further possible damages is expressly reserved. Blocking access to the server is permissible should the contractual partner, despite warnings, not fulfil his obligations within five weeks after the due date. Warnings may also be served electronically.

(3) Transaction Charges

The contractual partner agrees to not pass on to DIG bank charges for transactions, and will refrain from

making payments in cash, by check or by bill of exchange.

(4) Price Adjustments

DIG is entitled to raise prices for the contractual services in line with personnel- and other cost increases (Basis HICP 2011=100). DIG will notify the contractual partner of these price changes either in writing or by e-mail. The price increases are not valid for the period for which the contractual partner has already paid. A price increase within 12 months of the contract being signed is excluded.

§6 Data Protection and Security

Personal data are only used as specified in the following declaration regarding data protection and data security. Business-related data will be saved and processed by sender and/or receiver only within the scope of the contract.

(1) Data Protection Act

As operator of the internet portal www.dig.at and the data processing platform DIG EDI, eProcurement and all other related services, DIG is subject to the Data Protection Act. All laws and legal provisions pertaining to data security and data protection are strictly adhered to by DIG and its employees. All employees are contractually obliged to access only those data which are necessary to carry out contractually agreed services and to pass on none of this accessed information. Data are used only within the limits permitted by law or as stipulated by the sender or receiver.

(2) Technical Measures

For the security of processed data, DIG uses generally recognised technological security standards to protect data in the systems from misuse, loss or falsification.

DIG employs the standard, safety measures in compliance with security standards such as firewalls, virus scanners, VPN gateways and cryptographic systems in order to protect saved and processed data. All systems are protected through passwords or digital certificates, which are only known to authorised persons. Servers are only accessible to authorised persons; access is controlled by means of entry checking systems, alarm systems, CCTV surveillance and security guards. All server rooms are fitted with fire alarms and fire-fighting facilities. Data are backed-up on a regular basis at several independent premises. The contractual partner expressly acknowledges that all DIG connected data processing centres are outsourced and the contractual partner in this respect can himself only prevent interference within the framework of his contractual possibilities.

(3) Data Storage

In connection with access by senders or receivers to the services of DIG, data for the purposes of data security, operation and monitoring of service

function will be stored on the DIG system. In particular, the IP address, date, time, user name, accessed sites and activities, the browser used and the operating system as well as other data necessary for transparency of transaction will be stored. Log files, by means of which the results of the transaction can be documented, will also be stored. Further, the content of communications will also be stored in order to be able to provide the data again after completion of the transaction in the event of error or when required by sender or receiver, or in order to be able to document which data were transmitted.

(4) Data Use and Transfer

When a customer or his communications partner supplies personal or business-related data, DIG uses these only to reply to inquiries, for the execution of contracts undertaken with the contractual partner and for technical administration. Data will only be transferred or otherwise disclosed to third parties if this is necessary for fulfilment of contract obligations, particularly the transfer of data pertaining to orders to suppliers, for accounting purposes or if the sender or receiver has given their consent in advance. The contractual partner is entitled to withdraw any consent at any time for future effect. Stored data personal data will be deleted if consent to having them stored is withdrawn, if the data are no longer required for a specific purpose or if storing such data is otherwise illegal.

(5) Active Content

For the web-based applications to function correctly, active content is used in various places. Programs which can be executed on the computer of the user (JavaScript, for example) are referred to as active content. DIG guarantees that this active content is carefully checked before being integrated into the application. DIG is not aware of any malfunctions that could be caused by this active content.

(6) Data Transmission via Internet

All transmissions via internet are strictly carried out as encryptions using IPsec, SSL/TLS, SFTP, GPG, S/Mime or other suitable methods. A non-encrypted transmission is carried out only on the express wish of the communication partner when an encryption is not possible on technical or organisational grounds or is deemed not to be appropriate.

§7 Third Party Services

DIG has the right to engage the services, applications, programs and similar of third party providers with the agreement of the contractual partner. DIG will obligate such third parties to comply with the confidentiality and data security provisions as stipulated in this contract. DIG assumes no responsibility in the case of services, i.e. programs or applications, being no longer available

or failing. DIG will do everything in their power to ensure that any such failure will be remedied as quickly as possible.

§8 Confidentiality

For the purpose of fulfilling the contract, it is necessary for the contractual partner to provide DIG with data, information etc., the confidentiality of which the contractual partner as providing party has an interest in maintaining. To enable an appropriate information and data transfer, the following has been agreed in order to ensure confidentiality of the information, data, etc. transmitted or otherwise made available by the contractual partner:

- DIG commits itself to handling information, data, etc. transmitted or otherwise made available by the contractual partner with the strictest confidentiality and to not disclosing or making it available to third parties unless the contractual partner has expressly given permission to do so in advance.
- DIG will use the confidential information, transmitted or otherwise made available, solely for the purposes laid down in the contract unless and until such later time as a deviating agreement is concluded.
- The contractual partner holds unlimited rights of use to his knowledge and experience, particularly with regard to the confidential information transmitted or otherwise supplied by him to DIG. DIG has no rights to or arising from the confidential information supplied or otherwise made available by the contractual partner.
- DIG will give access to the confidential information received from the contractual partner only to those employees, bound by a confidentiality obligation (according to § 15 DSG 2000), whose duties are necessary for the fulfilment of the contract.
- The afore-mentioned obligations do not apply to such information, documents and data as are already public domain at the time of transmission by the contractual partner, or which were already well known at the time of transmission by the contractual partner, or which become public domain through no fault of DIG after transmission by the contractual partner, or which, after transmission to DIG, are made known by a third party in a lawful manner and without compromise in relation to maintenance of confidentiality or use.

The obligation to confidentiality as well as the obligation to uphold data protection regulations are permanent and do not expire with the termination or cessation of this contract or any part thereof.

§9 Contract Period and Termination

The minimum term of contract is 36 months. The contractual partner can terminate the contract after

the expiry of the minimum contractual duration with a 3-month period of notice to the end of the month. This is without prejudice to the right to terminate the contract without notice. A due and sufficient cause for termination exists if, taking into account all circumstances of the individual case and giving due consideration to the interests of both parties, a continuation of the contractual relationship until the end of the agreed contractual period or up until the expiry of a notice period cannot reasonably be expected. Before such a termination, a written warning is required unless successful completion can not be expected or the relationship of trust is so impaired as to justify an immediate termination of the contract.

Each of the parties has the right to terminate the agreement, in particular

- when the other party becomes insolvent, if insolvency proceedings are applied for against him and rejected as unfounded or if the insolvency proceedings are not carried out due to lack of funds;
- when the other party is in breach of contract and this breach is not redressed on the written notice of the party within an appropriate time limit of at least 3 weeks. A warning or deadline is not necessary when, due to the gravity of the breach of contract, the continuation of the contractual relationship cannot reasonably be expected, successful completion cannot be expected or, after due consideration of the interests of both parties, termination of the contract is justified, whereas DIG is normally entitled to a two-time right to rectification. A termination without notice is ruled out when the breach of contract is so insignificant that, after full evaluation of the circumstances, a termination without notice is deemed unjustified. The rights conferred pursuant to § 4 and § 5. 2 remain unaffected
- the contractual partner- when it is impossible for DIG to fulfil a significant contractual obligation, especially the provision of an application, for longer than 3 working days due to *force majeure* (particularly war, strike, natural catastrophe and power failure);
- DIG - when the contractual partner does not meet payment obligations despite written demand and blocking of access.

The contractual partner has the right to terminate the agreement, in particular

- when the system is not available to the agreed extent 6 times within 3 months.

Any termination must be in writing.

In the case of contract termination, DIG is obliged to guarantee and carry out a complete processing of data by a key date. Urgent solutions which are under process are to be completely finished by DIG.

The contractual partner has the right to have archived documents transferred without additional costs. The contractual partner can demand the deletion of all client data from the DIG system.

§10 DIG's Marketing Activities

The contractual partner expressly authorises DIG

- to inform publicly about the collaboration with the contractual partner as well as about the product range of the contractual partner.
- with the use of his logo for the marketing purposes of DIG.
- to mail him newsletters and other information material pertaining to the use of the platform until this authorisation is revoked.

Should the contractual partner offer products or services on the DIG eProcurement platform as a supplier, he also expressly authorises

- the use of his catalogue for illustration purposes in sales activities with interested parties and customers, for example for a DIG demo system. These will be priced at EUR 1 per piece.
- that interested parties and customers of DIG may be informed about productive interfaces with regard to the eProcurement capacities of the contractual partner.

§11 Liability

The contractual parties shall be mutually liable for every damage caused by them intentionally or through extreme gross negligence. They acknowledge and agree that the liability for personal injury and for the violation of intellectual property rights is unlimited.

DIG is not liable for damages, delays or impediments to performance which lie beyond their area of responsibility. DIG is however liable for the services provided by its subcontractors as they are for their own.

DIG is not liable for damages which arise due to unsuitable or improper use of the technology, or through a use of the technology not included in the contractual scope of service.

The liability of DIG, irrespective of legal basis, is limited to damages that are given in the table below, as listed for slight negligence and gross negligence as well as for subcontractors.

Table 1:

Slight negligence	in total € 100 000.- per claim
Gross negligence	in total € 100 000.- per claim
Subcontractor	in total € 100 000.- per claim

Compensation for the points listed is limited and must not together exceed the limits as stated above:

Increased transport costs	€ 25 000.-
Contractual penalty to customers of the client	€ -
Costs of replacement	€ 25 000.-
Discount losses	€ 10 000.-

Loss of interest	€ 10 000.-
Personnel costs (workaround)	€ 10 000.-
Loss of profit	€ 10 000.-
Lost data	€ 25 000.-

Other claims for damages – see Table 1

§12 Force Majeure

DIG shall be exempt from performing its service under this agreement if and when the non-performance of services is due to the circumstances of *force majeure* following the conclusion of the agreement.

Circumstances which are considered *force majeure* include: war, strikes, unrest, expropriation, fundamental changes in law, storm, flood and other natural disasters as well as other circumstances beyond the control of DIG (particularly flooding, power-cuts and disruption or destruction of data-carrying lines). Each contractual party agrees to inform the other contractual parties without delay and, where possible in writing, of the occurrence of a case of *force majeure*.

This is without prejudice to the right to terminate the contract without notice.

§13 Place of Jurisdiction and Applicable Law

This contract is subject to Austrian law under exclusion of its conflict of law rules and under exclusion of the UN Convention on Contracts for the International Sale of Goods. Any disputes arising from this contract shall be subject to the exclusive jurisdiction of the competent court in Linz/Donau as agreed.

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