

# GENERAL TERMS AND CONDITIONS OF BUSINESS



## APPLY TO THE CHARGEABLE ONLINE PROVISION OF SOFTWARE FROM THE SILVERDAT PRODUCT RANGE ON THE BASIS OF SOFTWARE AS A SERVICE OR AS A WEB APPLICATION (THE “SOFTWARE”) TO BUSINESSES

As at: 20 July 2022

These General Terms and Conditions of Business do not apply

- a) to the SilverDAT II product range
- b) to other on-premises or offline products
- c) to consumers within the meaning of Section 13 of the German Civil Code (*Bürgerliches Gesetzbuch*, ‘BGB’).

The DAT services consist of the transfer of the Software for online use and the granting of storage space on the servers provided by DAT (together, the ‘Commissioned Services’).

## 1 SCOPE

- 1.1 These General Terms and Conditions of Business (‘TCB’) of Deutsche Automobil Treuhand GmbH (‘DAT’), Hellmuth-Hirth-Strasse 1, 73760 Ostfildern, Stuttgart, District Court Commercial Register No. 214549, VAT identification number DE 147826142, apply to business relationships with entrepreneurs within the meaning of Section 14 BGB (the ‘CUSTOMER’ or ‘CUSTOMERS’).

‘Entrepreneur’ means a natural or legal person or a partnership with legal personality who or which, when concluding a legal transaction with DAT, acts in exercise of their trade, business or profession.

- 1.2 These TCB shall apply to all contracts concluded between DAT and the CUSTOMER (together, the ‘Parties’), for the chargeable provision of the Software (the ‘Contract’). These TCB shall apply exclusively and according to the version valid at the time of order placement, insofar as these TCB have not been amended by any additional written agreement between DAT and the CUSTOMER. The CUSTOMER acknowledges the applicability of these TCB as the contractual basis for the rendering of services by DAT. Any divergent or conflicting conditions of the CUSTOMER are not recognised by DAT and shall not apply, unless DAT has expressly agreed otherwise; this also applies where the divergent or conflicting conditions of the CUSTOMER are expressly mentioned in documents that become part of the Contract.

The currently applicable TCB are available to the CUSTOMER at [www.dat.de/silverdat-tcb](http://www.dat.de/silverdat-tcb) during the ordering process and at any other time and can be saved and printed by the CUSTOMER.

## 2 CONCLUSION OF CONTRACT

- 2.1 The provision of the Order Form on the DAT website or otherwise or the preparation of a tender by DAT do not constitute a legally binding offer for the conclusion of a Contract, but an invitation for the CUSTOMER to submit an offer.

- 2.2** A Contract between DAT and the CUSTOMER shall come into being either
- a) through a written or electronic order placed by the CUSTOMER using the Order Form or order process provided for a particular SilverDAT product or a particular SilverDAT application ('Order Form') and dispatch of the order confirmation by email or post by DAT, or;
  - b) by the CUSTOMER signing and returning an offer from DAT for a particular SilverDAT product or SilverDAT application (the 'Offer') and the dispatch of the order confirmation by email or post by DAT.

The unconditional activation of services by DAT is equivalent to the dispatch of an order confirmation.

- 2.3** Oral statements in conjunction with the conclusion of a Contract must be confirmed in writing by DAT in order to become effective; e-mail confirmation is also acceptable.

### **3 SCOPE OF SERVICES**

- 3.1** In return for payment, DAT will make the Software available to the CUSTOMER in its respective current version, for the duration of the Contract, via the Internet.
- 3.2** Throughout the duration of the Contract, DAT shall grant the CUSTOMER access to the server provided via the internet ('Software as a service'). DAT is obligated to ensure the proper operation and maintenance of the server. The place of provision of the services to the CUSTOMER is the router outlet of the computer centre used for the provision of the services.
- 3.3** The nature and scope of the services of DAT derive from the specific agreements reached between the Parties concerning the characteristics, attributes and performance features of the Commissioned Services, as they are to be inferred in particular from the Order Form completed by the CUSTOMER, or via a tender. The details in these or other documents or files provided by DAT shall not contain any guarantee of a particular quality of the services of DAT. In particular, technical data, specifications and performance requirements in public statements or advertising materials shall not comprise quality specifications. The Software is suitable for the intended use as outlined in the Contract and otherwise indicates a quality that is usual in a similar software. Where applicable, the nature and scope of the contractual services shall be derived from other documents, such as the applicable service or product description for the SilverDAT software product ordered by the CUSTOMER, as well as any agreed additional conditions, and these TCB.
- 3.4** DAT shall endeavour to use all reasonably available means to keep data, databases and software as complete and as up to date as possible. DAT also receives data underlying the Commissioned Services from data suppliers. DAT does not guarantee or make any warranty for the topicality, completeness or accuracy of these data, which are obtained from suppliers. DAT is not obliged to provide complete coverage for all vehicle types.
- 3.5** The provision of services by DAT is conditional upon prompt and/or proper supplies (coverage transaction). In the event of improper and/or late supply under the coverage transaction, DAT shall be released from the obligation to provide the service, or shall be entitled to withdraw from the respective Contract if improper and/or late supply under the coverage transaction lasts for a period of at least 90 consecutive days. This shall not apply where the late or improper delivery is the responsibility of the sub-supplier of DAT. Where such late and/or improper supply under the coverage transaction is due to force majeure, Clause 17 shall apply.

- 3.6** The DAT servers are connected to the internet via a complex system architecture. The data traffic flows via routers, switches, load balancers, firewalls, and others that each permit a specific maximum data throughput. For technical reasons the servers' available data transmission bandwidths are limited. An increased volume of data traffic can therefore result in the maximum possible data throughput being unavailable. In such cases, the data throughput shall be technically distributed across the connected servers or users. No guarantee is made for the availability of a specific bandwidth. The CUSTOMER accepts sole responsibility for their internet connection and its suitability and availability.
- 3.7** In the case of the provision/utilisation of the Commissioned Services outside the Federal Republic of Germany, foreign legislation, regulations or other state-specific provisions or transfer conditions may have the consequence that the Contract cannot be performed in the intended way. In this event, the CUSTOMER and DAT shall have the right of extraordinary termination in accordance with Clause 19.2.
- 3.8** DAT is free to choose the manner in which it delivers the Commissioned Services. In particular, it can engage third parties or integrate the services and work of third parties into the Software and/or the Commissioned Services performed by it. On request, DAT shall clarify to the CUSTOMER the extent of any third-party involvement in the provision of the Commissioned Services.

## **4 ACCESS TO THE SOFTWARE**

- 4.1** Access to the Software shall be granted via the CUSTOMER'S user profile in the MyDAT Customer area on the DAT website.
- 4.2** In the event that the CUSTOMER does not yet have a user profile, the appropriate access authorisations for the CUSTOMER login shall be created according to the data for the MyDAT Customer area supplied on the Order Form.
- 4.3** The data required for the creation of the user profile must be provided completely and truthfully. Where necessary, DAT shall assign a user name and a password ('Access Data') to the CUSTOMER and send these to the CUSTOMER by email. The password must subsequently be changed by the CUSTOMER. The user name and password must not infringe on the rights of any third party or other name and trademark rights, or run counter to accepted principles of morality. The CUSTOMER must keep their Access Data secret, must under no circumstances inform any third party of it, and must protect it from unauthorised access by any third party. In the event of suspected misuse of Access Data or the user profile, the CUSTOMER must inform DAT immediately. The CUSTOMER may create additional users ('Root Users') using the initial user profile, which is limited to the scope of the licence in accordance with Clause 9. The aforementioned obligations also apply to these users and must be imposed in the same way on all users by the CUSTOMER.
- 4.4** To check whether the CUSTOMER is an Entrepreneur, DAT may require disclosure of the VAT identification number. DAT may also require extracts from public registers in order to verify entrepreneurial status.
- 4.5** If the CUSTOMER'S profile details change, the CUSTOMER must inform DAT of these changes immediately.

## 5 OBLIGATIONS OF THE CUSTOMER

- 5.1** The CUSTOMER must, at their own expense, maintain appropriate hardware, operating system software, communication or internet connections to use the Commissioned Services in accordance with the Contract within their own IT system environment and must ensure their ongoing operation, maintenance and updating. DAT shall accept no responsibility or liability in the event that the Commissioned Services cannot be used as contractually intended where this is a consequence of the CUSTOMER not performing their aforementioned obligations either in full or in part. If this happens, the CUSTOMER'S payment obligations shall remain unaffected. All of the CUSTOMER'S hardware, communications and internet connections may be situated only and exclusively within the national borders where the CUSTOMER has its registered office. If the CUSTOMER operates their IT environment in other countries, they must inform DAT promptly and obtain DAT'S written consent before utilising the Commissioned Services.
- 5.2** The CUSTOMER agrees to the following when using the Commissioned Services:
- ▶ To organise the use and manage any content they post lawfully and not in a way that infringes on third-party rights;
  - ▶ To ensure that the posted content does not offend the religion or culture of other users and/or CUSTOMERS, and does not contain any defamatory, abusive, offensive, threatening, obscene or pornographic material, any youth-endangering material or any material that is otherwise unlawful or runs counter to accepted principles of morality;
  - ▶ Not to use the Software to send any unsolicited mass emails with the same content, junk mail, spam or chain letters;
  - ▶ Not to conduct or publish any benchmarking or availability tests related to the Software;
  - ▶ Not to conduct or publish any performance or vulnerability tests related to the Software without the prior written authorisation of DAT, or to conduct or publish any network discovery or port and service identification, vulnerability scanning, password-cracking or remote access tests related to the Commissioned Services; and
  - ▶ Not to use the Software to conduct cyber- or cryptocurrency mining.
- 5.3** If the CUSTOMER breaches the aforementioned obligations, DAT, in addition to any other applicable rights, and if the granting of an adequate remedy period fails to yield results, shall be entitled to remove the content concerned, block access to it temporarily, or suspend the CUSTOMER'S access to or use of the Commissioned Services.
- 5.4** DAT can also suspend the CUSTOMER'S access to or use of the Commissioned Services if DAT deems that:
- ▶ There is a significant threat to the functionality, security, integrity or availability of the Commissioned Services or of the stored content, data or applications; or
  - ▶ The CUSTOMER is accessing the Commissioned Services or uses them to carry out an illegal activity.
- 5.5** Where this is reasonably practicable and permitted by law, DAT will inform the CUSTOMER of such a suspension. DAT shall make reasonable efforts to re-establish access to the Commissioned Services without delay, once a remedy for the cause of the suspension can be determined.

- 5.6** The CUSTOMER must not share the Access Data and passwords granted to them by DAT and must take the necessary and usual security measures against any unwanted and wrongful use by third parties. The CUSTOMER is responsible for the regular updating of Access Data and passwords. The CUSTOMER must also keep these, as well as any disclosed licence numbers, secret from third parties.
- 5.7** The CUSTOMER shall impose these obligations in the same way on their employees and vicarious agents.
- 5.8** If the CUSTOMER culpably and in breach of the Contract enables third parties to use the Commissioned Services, in breach of the Contract, the CUSTOMER must compensate DAT for any ensuing damage.

## **6 DOCUMENTATION OF ACCESS TO THE COMMISSIONED SERVICES**

For the provision of the Commissioned Services, DAT is instructed, for accounting purposes, to document the individual transactions of the CUSTOMER. For this purpose DAT shall automatically and continuously record the transaction data as it is accrued during use. DAT shall use the CUSTOMER'S recorded transaction data for accounting purposes and shall make this available to the CUSTOMER for inspection on request.

## **7 SUPPORT AND AVAILABILITY**

- 7.1** DAT is not obligated to make the Commissioned Services available at all times without interruption. Although the Commissioned Services are state of the art, it cannot guarantee a complete absence of defects in the Commissioned Services. For this reason the CUSTOMER must expect that the Commissioned Services may not be entirely free of defects in each function. DAT shall make every effort to provide the Commissioned Services to the CUSTOMER as defect-free as possible to ensure full usability. However, like all software, minor software errors cannot be completely ruled out. Restrictions or impairments in the Commissioned Services provided by DAT may also arise, which are beyond the control of DAT. These include, in particular, the actions of third parties and technical conditions of the internet that DAT cannot influence, such as force majeure. The properties of the hardware and software deployed by the CUSTOMER also impact the availability and usable bandwidth of the data transfer.
- 7.2** DAT regularly conducts maintenance work on its systems for the security of the system operation, for the protection of the network, the functionality of the Commissioned Services and to ensure data protection. DAT shall, in the course of this maintenance work, carry out regular data updates and programme development, and remove any bugs and errors. In so doing, DAT may temporarily cease or restrict its services whilst taking into account the interests of the CUSTOMER. DAT shall undertake the maintenance work, insofar as possible, during low-use periods. Should longer temporary interruptions or restrictions be necessary, DAT shall inform the CUSTOMER in advance of the nature, extent and duration of the restriction, to the extent possible in the circumstances and to the extent this is reasonable with regard to the elimination of interruptions that have already occurred.

- 7.3** The CUSTOMER must report all errors and disruptions to the Commissioned Services to DAT immediately in one of the following ways:
- ▶ by calling +49 (0)711 4503130, and
  - ▶ by sending an e-mail to kundendienst@dat.de or
  - ▶ by submitting a support request in the myDAT Services area

## **8 CHANGES TO THESE TCB AND THE CONTRACTUALLY AGREED SERVICES**

- 8.1** DAT may amend these TCB as needed to adapt to developments that were not foreseeable at the time of Contract conclusion and which DAT has not caused or cannot influence, and the non-consideration of which would upset the balance of the contractual relationship to a significant extent. DAT may amend these TCB as long as the material provisions of the contractual relations are not affected. Material provisions are those provisions concerning the type and scope of the contractually agreed services and the duration, including provisions for termination.

Further, these TCB may be adjusted as needed to remove significant difficulties in the Contract performance due to loopholes appearing after Contract conclusion. This may be the case, in particular, where Supreme Court jurisprudence changes the operational effect of any provisions of these TCB, where one or several of these provisions are rendered invalid by case law or a change in the law renders invalid one or several provisions of these TCB.

- 8.2** DAT is entitled to change the contractually agreed services where this is necessary for just cause and was not foreseeable at the time of Contract conclusion, and where this change does not shift the relationship between the service rendered and the compensation to the disadvantage of the CUSTOMER, so that the change is reasonable for the CUSTOMER. There is just cause when new technical developments make a service change necessary since DAT can no longer provide the service in the contractually agreed-upon form, or where newly enacted or amended statutory or other government stipulations or a change in Supreme Court jurisprudence necessitate a service change.
- 8.3** DAT shall inform the CUSTOMER in text form of any changes to these TCB or to the contractually agreed services at least four (4) weeks before they are due to come into effect.
- 8.4** Any changes to these TCB or to the contractually agreed services shall be deemed accepted if the CUSTOMER does not object to them by the time they come into effect. DAT shall inform the CUSTOMER of this legal consequence in particular via a notification of changes.

## **9 COPYRIGHT, INTELLECTUAL PROPERTY AND OTHER RIGHTS OF USE**

- 9.1** DAT or the respective licensor holds the exclusive property or ownership rights of the Commissioned Services, the data or databases, graphics, forms, and texts contained therein or accessible through them and the underlying software and IT infrastructure and any websites of DAT (together also 'DAT IP'). The contents are protected by national and international law, in particular copyright law. The unauthorised circulation, reproduction, exploitation or other breach of the intellectual property rights and copyrights of DAT or of the respective licensor shall be pursued under civil and/or criminal law.
- 9.2** In relation to the CUSTOMER, DAT is the owner of all property rights, in particular of all copyrights, trademarks and title protection rights, as well as exclusive rights of use in the DAT IP.

- 9.3 On full payment of the remuneration due under the Contract, DAT shall grant to the CUSTOMER the non-transferable, non-exclusive and simple right of use within Germany, limited in time to the duration of the Contract for the Software, including the associated data and databases, graphics, forms and texts. Dissemination in other countries and use abroad are not permitted, even where the CUSTOMER operates a branch or a connected undertaking there, unless a separate agreement is made in written form or text form between DAT and the CUSTOMER. No other rights shall be granted to the CUSTOMER.
- 9.4 Any use of the Software and the associated DAT IP by the CUSTOMER not covered by these TCB is not permitted. The CUSTOMER is, in particular, not entitled to sell, transfer, rent out, sub-licence, change, adapt, translate, reverse-engineer, decompile or disassemble the Software and the associated DAT IP or parts thereof (this also applies, but not exclusively, to the checking of data structures or similar material generated by the programmes) or to copying it in whole or in part or using it in a way that benefits or makes them accessible to the public. The CUSTOMER may not create derivative products, ascertain the source code by means of the object code or use the Software and the associated DAT IP or elements of it for purposes that do not serve the use of the Commissioned Services by the CUSTOMER.
- 9.5 The CUSTOMER has no right to transfer the Software for use to other companies or any other third party. The CUSTOMER may use the Software only on the connected, definable premises stated on the Order Form or tender, which are not intersected by public roads, highways or paths, including the operational facilities ('establishments', 'operating facilities', 'branches' or 'offices') of the CUSTOMER. Any additional establishment or operating facility, branch or office of the CUSTOMER requires a separate Contract to be concluded, unless otherwise agreed.
- 9.6 The use of the Software by the CUSTOMER is limited to the agreed number, according to the Order Form or tender, of persons employed by the CUSTOMER who have access to the Software ('User'). The Commissioned Services may only be used by this defined number of Users at any one time ('Concurrent User').
- 9.7 Following the end of the Contract term, the CUSTOMER is no longer authorised to use the Software and its associated data or databases, graphics, forms or texts. The CUSTOMER must immediately erase any locally installed Software including its associated data or databases, graphics, forms or texts and, upon request, promptly facilitate its de-installation or inspection by DAT or a DAT representative.
- 9.8 The data and analysis data created by the CUSTOMER in accordance with the Contract using the Software until the end of the Contract term ('Analysis Data') may only be used after the end of the Contract term where the CUSTOMER has stored this themselves at their own expense in due time before the expiry of the Contract term outside the DAT IT environment. The CUSTOMER is responsible for storing their Analysis Data for later use.
- 9.9 The non-mandatory provisions of Sections 69a ff. German Copyright and Related Rights Act (*Urheberrechtsgesetz*) shall not be affected by the aforementioned provisions.

## 10 RIGHTS OF THIRD PARTIES, INDEMNITY

- 10.1 Where the CUSTOMER has access to third-party software and/or third-party content through the use of the Commissioned Services, all copyrights and intellectual property rights in the contents and/or the third-party software and the use of these contents and/or third-party software are subject to the following conditions and, where applicable, special conditions between the CUSTOMER and the third party, unless otherwise agreed at the time of Contract conclusion.

- 10.2** The CUSTOMER undertakes to indemnify DAT against all claims for damages, expenses and other liabilities including reasonable legal fees that arise from a culpable breach of third-party rights through any use that runs counter to the Contract of the Commissioned Services by the CUSTOMER. The CUSTOMER must immediately inform DAT if a third party makes a claim against the CUSTOMER for breach of intellectual property rights as a result of using the Commissioned Services. The CUSTOMER undertakes not to admit the alleged infringement of rights and not to conduct the dispute concerning the alleged infringement without prior coordination with DAT. The CUSTOMER shall - to the greatest possible extent - allow DAT to defend the claims made against the CUSTOMER and support DAT in this in the best possible way.
- 10.3** DAT receives, uses and processes third-party data, primarily those of manufacturers and importers of motor vehicles who hold copyrights and intellectual property rights that possibly predominate vis-à-vis DAT ('Data Suppliers'). In the event that the CUSTOMER culpably breaches the contractual provisions agreed between them and DAT, in particular the provisions concerning the scope of the rights of use granted and/or the secrecy obligations, this can lead to claims by the Data Suppliers against DAT for payment of a contractual penalty.
- 10.4** In the event of a claim for payment of a contractual penalty by the Data Suppliers against DAT for which the CUSTOMER is responsible, the CUSTOMER shall indemnify DAT against such a claim upon first request. The provisions of Clause 10.2 shall apply accordingly.

## 11 GRANTING OF RIGHTS BY THE CUSTOMER

- 11.1** The CUSTOMER shall retain all copyrights and intellectual property rights in the content they place within the Commissioned Services. The CUSTOMER accords DAT the right to host, use, process, display and transfer the content to the extent necessary for the provision of the Commissioned Services according to the contractual agreements.
- 11.2** The CUSTOMER grants to DAT the non-exclusive and transferable right, unlimited in time or territory, to use the purely technology-related components of the Analysis Data created by the CUSTOMER in an anonymised way, i.e. without personal data, for its own business purposes, and in particular to evaluate, copy, disseminate or publicly reproduce it.

## 12 CONFIDENTIALITY

- 12.1** The CUSTOMER undertakes to treat as business secrets the confidential information and documents ('Confidential Information') of DAT, which are either clearly to be regarded as confidential or have been designated confidential by DAT and not to make these accessible to third parties. Companies affiliated with the CUSTOMER, in which the CUSTOMER holds no capital or majority voting rights, are deemed third parties within the meaning of this Contract. The employees of the CUSTOMER and other third parties commissioned by the CUSTOMER (including sub-contractors and freelancers) shall be bound by the same obligations.
- 12.2** In particular, the IT infrastructure retrievable by means of the Software and all technologies of DAT together with information that DAT issues in the course of dealing with support enquiries or collaboration for the purposes of error-handling are deemed to be Confidential Information. However, the usage rights granted by DAT remain unaffected.



- 12.3** The CUSTOMER may pass on the information and documents made accessible to them to third parties insofar as this is essential for the performance of the Contract or the exercise of contractual rights, or where this is absolutely necessary for legal or regulatory reasons. In the event of queries from third parties, judicial or administrative authorities concerning the disclosure of Confidential Information, the CUSTOMER must inform DAT immediately in written form or in text form and support DAT in its efforts to prevent the disclosure of the Confidential Information.
- 12.4** The obligation of secrecy does not apply where the Confidential Information was already known to the CUSTOMER before its disclosure by DAT, is commonly known, or becomes known through no fault of the CUSTOMER, has been developed by the CUSTOMER themselves without access to the Confidential Information of DAT, or has been brought to the attention of the CUSTOMER by a bona fide third party with rights to access it. The mandatory statutory disclosure requirements are reserved. If the CUSTOMER relies on one or more of the aforementioned grounds, they must substantiate the grounds by producing sound evidence.
- 12.5** The obligation of secrecy commences when the Confidential Information is discovered and continues throughout the term of this Contract and indefinitely thereafter following termination or ending of the contractual term. The CUSTOMER undertakes, to the extent that is legally possible, that the obligations of secrecy shall also be binding on their legal successors, assignees and affiliated companies.
- 12.6** During the validity period of this obligation of secrecy, Confidential Information is to be returned to DAT as soon as it is first requested, uncompromised and in full. Furthermore, DAT can mandate that certain Confidential Information be destroyed, erased or put away safely and that the CUSTOMER confirms that they have done so in writing. The aforementioned provisions in this Clause apply only to the extent that they do not significantly affect the use of the contractual services in line with this Contract.
- 12.7** The obligations under this Clause (12) for keeping the Confidential Information of DAT secret shall also apply where, in an individual case, DAT has taken no reasonable confidentiality measures within the meaning of Section 2 No. 1 b) of the German Business Secrets Protection Act (*Gesetz zum Schutz von Geschäftsgeheimnissen*).

## 13 AUDIT

- 13.1** Where DAT provides software, data or databases for the CUSTOMER to use, in the event of a justified suspicion of a breach of licence, copyright or intellectual property rights, DAT shall be entitled to conduct a review on the compliance level of the actual Software usage at the CUSTOMER'S premises during regular business hours. The review may only be conducted by an independent (non-DAT) expert or examiner (the 'Auditor') who is enjoined to secrecy vis-à-vis DAT and who is obligated to only release information to DAT if breaches of licence, copyright or intellectual property rights are found, or if such breaches are suspected, and only to the extent that this information is necessary for the enforcement of possible claims by DAT on the ground of such breaches. The CUSTOMER must be given reasonable notice of the audit, i.e. this must be done within a period of at least ten (10) calendar days and submitted to the CUSTOMER in writing. DAT shall ensure that the business activities of the CUSTOMER are not unduly disrupted by the review.
- 13.2** The CUSTOMER must give the Auditor all the details needed to conduct the audit. The Auditor shall determine their needs. In so doing, the CUSTOMER shall ensure that no personal data is disclosed or made available during the course of the audit unless this occurs legally.

**13.3** If the audit reveals any breaches of the Contract on the part of the CUSTOMER or any payment discrepancies in excess of 3% that is due to the fault of DAT, the CUSTOMER must bear both the licence fee and the full cost of the audit. Otherwise, DAT shall be responsible for the cost of the audit.

## **14 PAYMENT TERMS**

### **14.1 Remuneration**

On entering into the Contract, the CUSTOMER undertakes to pay the remuneration agreed on concluding the Contract or the price stated on the Order Form or tender for use of the Software or the Commissioned Services. All prices are quoted in euros and are net of the applicable value added tax.

### **14.2 Fees not dependent on usage**

Fees not dependent on usage (e.g. the SilverDAT 3 licence fee or one-off costs such as the set-up fee) shall be invoiced annually and in advance for the term of the Contract where no shorter accounting period has been agreed (i.e. agreement to pay in instalments). If the contract becomes effective during the calendar year, the annual fee shall be calculated on a pro rata basis.

### **14.3 Fees dependent on usage**

Fees dependent on usage (e.g. the transaction fee governing the use of SilverDAT identifyVIN) shall be invoiced after the end of the respective accounting period, unless otherwise agreed in writing.

### **14.4 Billing address**

DAT shall prepare and send invoices stating the order number to the address or email address provided by the CUSTOMER. Where the CUSTOMER has not provided a change of address, DAT may invoice the CUSTOMER for the costs of ascertaining the address.

### **14.5 Due date**

Invoices issued by DAT are payable immediately, unless agreed otherwise.

### **14.6 Payment methods**

Unless agreed otherwise, payment by the CUSTOMER shall be done by a transfer to an account of DAT specified on the invoice, or by direct debit or SEPA direct debit. In the latter case, the CUSTOMER authorises DAT to debit their account for all payments due in the course of the contractual relationship by SEPA direct debit. The CUSTOMER must ensure that sufficient funds are in the account on the due date. At the same time, the CUSTOMER must instruct their bank to honour the direct debits drawn by DAT on their account. The period for the pre-notification is reduced to seven (7) calendar days. If the debited sums are recovered wholly or in part from DAT, the total remaining annual charge shall be due.

### **14.7 Price adjustment**

If the costs of providing the Commissioned Services change subsequent to conclusion of the Contract, DAT may alter the prices in its reasonable discretion (Section 315 (3) BGB) by giving at least six (6) weeks' notice. If the CUSTOMER does not object following receipt of this notification of price adjustment within a period of six (6) weeks, the price adjustment shall be deemed accepted. In the event of price adjustment, the CUSTOMER shall be informed of their right to object and the legal implications of non-objection.

### **14.8 Offsetting, right of retention**

The CUSTOMER's claims may only be offset against counterclaims made by DAT or claim a right of retention where the CUSTOMER has a claim that is undisputed or has been established as legally valid.

#### **14.9 Default of payment**

If the CUSTOMER defaults in payment, DAT may, for the duration of the delay, exercise its right of retention and block the CUSTOMER from receiving the Commissioned Services. In the event of default of payment, DAT may also demand compensation for each unjustified reverse debit in the sum of the bank charges for the reversed debit. The payment obligation of the CUSTOMER shall not be affected should DAT exercise its right of retention. Furthermore, DAT is entitled to exercise its right to extraordinary termination as per Clause 19.2.

### **15 CLAIMS FOR DEFECTS**

- 15.1** In the event of defects in the Commissioned Services, DAT shall be liable only in accordance with the following provisions.
- 15.2** Defects are material deviations from the contractually agreed upon scope of functions of the Software and/or of the storage space provided.
- 15.3** If the Commissioned Services to be provided by DAT under the Contract are defective, DAT shall, at its election and within a reasonable period and after receipt of a complaint from the CUSTOMER in written form or text form improve or re-supply the services. The provision of instructions for use, with which the CUSTOMER may reasonably remedy the defect that has arisen in order to use the services in accordance with the Contract, shall be deemed a cure.
- 15.4** If the defect-free provision of the services fails for reasons for which DAT is responsible, also within a reasonable period set by the CUSTOMER in writing, the CUSTOMER can reduce the agreed remuneration by a reasonable amount. Such a right to reduction shall be limited to the amount of the monthly remuneration for the defective portion of the services.
- 15.5** The CUSTOMER shall notify DAT immediately in written form or text form of any defects. Further, the CUSTOMER shall assist DAT with the elimination of defects at no charge and send DAT all information and documents that DAT needs for the analysis and elimination of defects.
- 15.6** In the event of defects in a contract to produce a work (Section 631 BGB) the statutory rights regarding warranties for defects shall apply, whereby the limitation period for defect claims for such services - aside from claims for compensation - is twelve (12) months from the date of completion.
- 15.7** Incorrect data shall be corrected by DAT promptly, wherever possible, following the CUSTOMER'S submission of a comprehensive written defect description. Any warranty on the part of DAT for the accuracy, completeness and/or usability of the data provided to it by manufacturers and importers of motor vehicles, other market participants and their sub-suppliers, is excluded. Any warranty that the application or the data contained therein correspond to the requirements or expectations of the CUSTOMER is also excluded. It is the responsibility of the CUSTOMER to determine the accuracy, completeness or usefulness of all data, information or other content that is made available to them.
- 15.8** The assignment of claims for defects is excluded.
- 15.9** Claims for compensation are subject to the limitations set forth in Clause 16.

## 16 LIABILITY, LIMITATION OF LIABILITY

**16.1** DAT accepts unlimited liability for intent and gross negligence, and for guaranteed characteristics. DAT also accepts unlimited liability for any culpable injury to life, limb or health, in accordance with the German Act on Liability for Defective Products (*Produkthaftungsgesetz*), for fraudulent concealment of a defect or in other cases of mandatory legal liability.

**16.2** In the event of a slightly negligent breach of duties, the performance of which is a fundamental prerequisite for the proper execution of the Contract, the breach of which jeopardises the achievement of the purpose of the Contract and on the fulfilment of which the CUSTOMER regularly relies ('**Material Contractual Duties**'), DAT shall be liable only for the foreseeable damage typical of the Contract.

In all other respects, DAT shall not be liable for a slightly negligent breach of contractual duties other than the Material Contractual Duties referred to in the previous sentence.

**16.3** Subject to Clauses 16.1 and 16.2, which remain unaffected, the following limitations on liability shall apply:

**16.3.1** The CUSTOMER is aware that they must, in compliance with their duty to avert, minimise or mitigate loss, in particular ensure regular data backups and, in the event of a suspected software error, must take all reasonable additional security measures so that lost data can be retrieved at a reasonable expense and software errors are reproducible. In the event of a loss of data caused through slight negligence on the part of DAT, DAT shall be liable only for the costs of reproduction of the data from the backup files to be produced by the CUSTOMER and for restoring the data which would also have been lost if the data had been correctly backed up.

In the case of online data transfer, DAT shall not be liable for faulty or impossible transfers where the cause lies in a third-party transfer network.

**16.3.2** The liability of DAT for the accuracy, completeness and/or usability of the data provided to it by manufacturers and importers of motor vehicles, other market participants and their sub-suppliers is excluded.

**16.4** Strict liability of DAT for defects existing at the time of Contract conclusion, as per Section 536a BGB is expressly excluded.

**16.5** The aforementioned exclusions and limitations of liability shall apply to the same extent in favour of executive bodies, legal representatives, employees and other vicarious agents (*Erfüllungsgehilfen*) of DAT.

**16.6** More extensive liability than contemplated in this Clause (16) is - regardless of the legal nature of the claim - excluded. For clarification purposes, DAT shall also not be liable for any damage not attributable to it that has been caused by accident, by force majeure, by unforeseeable administrative restrictions, computer viruses in data processing systems or hacker attacks despite DAT having taken reasonable and customary IT security measures.

## 17 FORCE MAJEURE

- 17.1** Force majeure is any event or circumstance that is not within the appropriate control of the CUSTOMER or DAT and that was by its nature not foreseeable or, if it was foreseeable, was unavoidable ('Force majeure'). The following are deemed force majeure in particular: floods, droughts, earthquakes or other natural catastrophes, quarantines, epidemics or pandemics, terrorist attacks, civil wars, revolts or unrest, wars, threats of war or war preparations, armed conflicts, the imposition of sanctions, embargos or the breaking-off of diplomatic relations, nuclear, chemical or biological contamination, any legislation or action of a government or public authority, including but not limited to the imposition of export or import restrictions, quotas or bans, the collapse of buildings, fires, explosions or accidents and the interruption or failure of the public grid, supply problems and other supply disruptions on the part of DAT'S sub-suppliers due to events or circumstances that amount to force majeure as per the agreement between DAT and the CUSTOMER or according to the corresponding agreement between DAT and a sub-supplier (according to the respective definition).
- 17.2** In the event of delays in service caused by force majeure, the Contract shall be suspended and the date of service extended by the period of delay. DAT shall not be liable for delays in service where these are due to force majeure.
- 17.3** Where the force majeure event lasts for longer than ninety (90) calendar days, DAT and the CUSTOMER may both give notice of Contract termination in writing without observing an additional notice period. Where the CUSTOMER exercises the right to terminate, it shall pay DAT for the services provided up until the termination takes effect.

## 18 EXPORT

- 18.1** Software may - notwithstanding its design as a software-as-a-service solution - be subject potentially to trade restrictions, such as export and import limitations and embargos. In particular, there can be authorisation requirements and prohibitions, inter alia, for the use of the Software or technologies associated with it abroad. The CUSTOMER shall ensure that it complies with all applicable export control laws and provisions to the extent that this is required with regard to the Software to be used in the context of this Contract, that it uses the Software abroad lawfully and that it provides to DAT all the information needed for any authorisation applications. The CUSTOMER also agrees that prior to the granting of any necessary authorisation it will use the Software only to the extent that is permitted without an authorisation.
- 18.2** The term 'sanctions' refers to all restrictions applicable to DAT and adopted by states, communities of states and institutions, particularly in relation to the provision of funds and economic resources. The CUSTOMER declares that it is not itself included on a sanctions list, is not within the ownership or under the control of a sanctioned natural or legal entity, is not located in a sanctioned state and does not use the Software in a sanctioned state or provide it to a sanctioned party.

The CUSTOMER is also obligated to immediately inform DAT of any information that would invalidate the aforementioned declaration.

- 18.3** The CUSTOMER shall fully indemnify DAT against all claims made against DAT by third parties, in particular authorities, on the grounds of non-compliance with the provisions in Clauses 18.1 and 18.2, and undertakes to compensate DAT for all damages and expenses it incurs. This shall not apply where the CUSTOMER is not responsible for the breach of duty. This does not constitute a reversal of the burden of proof.

**18.4** The performance of the Contract by DAT is subject to the proviso that this performance is not prevented by any applicable national and international provisions of export and import or foreign trade law, any embargos and/or other sanctions and any other statutory provisions.

## **19 CONTRACT TERM, TERMINATION**

**19.1** Where no other agreement has been made, a Contract shall be concluded for an indefinite period, but at least until the end of the calendar year following the date of the order (**'Minimum Term'**). Ordinary termination is permitted by giving three (3) months' notice to the end of the Minimum Term or the end of a calendar year following the Minimum Term.

**19.2** This does not affect the right to extraordinary termination for cause. In particular, cause is defined where a party intentionally or negligently breaches a material obligation of the contractual relationship and thus makes abiding by the Contract no longer reasonable for the terminating party. Important grounds that give DAT the right to extraordinary termination are, in particular:

- ▶ A delay in payment by the CUSTOMER with at least a not insignificant part of the remuneration not dependent on usage owed under Clause 14.2, when DAT has threatened termination to the CUSTOMER with notice of two (2) weeks to effective termination in text or written form,
- ▶ A delay in payment by the CUSTOMER of the remuneration dependent on usage owed under Clause 14.3 in the amount of the fee dependent on usage for at least two (2) billing periods, when DAT has threatened termination to the CUSTOMER with notice of two (2) weeks to effective termination in text or written form,
- ▶ A breach of confidentiality or copyright and intellectual property rights by the CUSTOMER, where the CUSTOMER does not cease their infringing activities within a reasonable period that DAT has previously requested for this cessation in writing,
- ▶ Incorrect information from the CUSTOMER concerning their financial situation that was of major importance for DAT when it resolved to conclude the Contract and provide its services to the CUSTOMER,
- ▶ The commencement or threat of a material deterioration in the CUSTOMER'S financial situation and thus the contingent threat to the performance of obligations by the CUSTOMER,
- ▶ A repeated breach by the CUSTOMER of its contractual obligations, where the CUSTOMER has not taken steps to rectify a remediable breach within a reasonable period after a warning has been issued,
- ▶ A DAT competitor holds a share of more than ten per cent (10%) in the CUSTOMER'S business, or if the CUSTOMER holds a share of more than ten per cent (10%) in a DAT competitor's business.
- ▶ Trade restrictions and sanctions in accordance with Clauses 18.1 and 18.2.

**19.3** Any notice of termination must be made in writing in order to be effective; notice submitted via e-mail is sufficient.

## 20 DATA PROTECTION

- 20.1** The Parties agree to only process personal data in accordance with the provisions of the applicable data protection laws, in particular with the EU General Data Protection Regulation ('GDPR') and the German Federal Data Protection Act (*Bundesdatenschutzgesetz*).
- 20.2** Where DAT processes personal data for the CUSTOMER during the course of their business relationship, the Parties shall enter into a data processing agreement in accordance with the provisions of Art. 28 GDPR.
- 20.3** In addition, the parties should refer to **DAT'S data privacy declaration**, available at [www.dat.de](http://www.dat.de) during the ordering process and at any other time. It can be accessed, saved and printed by the CUSTOMER.

## 21 FINAL PROVISIONS

- 21.1** Separate agreements are only legally binding if they are made in writing with DAT or are confirmed by DAT in writing.
- 21.2** In the event of inconsistencies between the Order Form/tender, these General Terms and Conditions of Business and, where applicable, any agreed Special Terms for the respective Commissioned Services ('**Special Terms of Business**'), the following order of priority shall apply, with the first named document having priority over the respective sub-document:
1. Order Form/tender
  2. Special Terms of Business
  3. General Terms and Conditions of Business
- Loopholes are not deemed inconsistencies in this sense.
- 21.3** The law of the Federal Republic of Germany shall apply. The provisions of the United Nations Convention on Contracts for the International Sale of Goods (UN sales law) shall not apply, even where the CUSTOMER is domiciled abroad. Mandatory provisions of the country in which the CUSTOMER is an ordinary resident remain unaffected.
- 21.4** The place of performance for supplies and services is the DAT headquarter.
- 21.5** If the CUSTOMER is a merchant, a legal entity under public law or a special fund under public law, exclusive jurisdiction for all disputes arising from or in connection with a Contract between DAT and the CUSTOMER shall be the location of the DAT headquarter. However, DAT may also submit a claim in the general place of jurisdiction of the CUSTOMER.
- 21.6** Should individual provisions of these TCB be or become invalid either in whole or in part, this shall not affect the remaining provisions of the Contract between DAT and the CUSTOMER. The invalid provision shall be replaced by a valid provision that most closely approximates the invalid provision in a legal, economic and effective respect.