

Agreement on the processing of personal data according to art. 28 GDPR

between FlowMate GmbH, Harry-Blum-Platz 2, 50678 Cologne, Germany ("processor").

and

the client of the services offered by FlowMate ("controller")

1. Object of the commissioning

The controller shall have personal data processed by the processor on its behalf on the basis of the "General terms and conditions of FlowMate GmbH" (the "main agreement").

2. Object of the processing

The object of the processing of personal data is the provision of the services stipulated in the main agreement by the processor for the controller. The purpose of the processing as well as the categories of data subjects and categories of personal data can be derived from the main agreement and are presented in **Annex 1**.

3. Location of the processing

The processing shall initially take place exclusively in a member state of the European Union or in another contracting state of the Treaty on the European Economic Area (EEA). Should data processing take place in a third country, the processor shall ensure that this occurs exclusively in compliance with the requirements of the General Data Protection Regulation (GDPR), article 44 et seqq.

4. Responsibility and right of instruction of the controller

- 4.1. The controller is the controller of the data processing of the personal data as stated in art. 4 (7) GDPR. He is responsible for compliance with the legal obligations on data protection, in particular for the lawfulness of the data processing and transfer of the data to the processor.
- 4.2. The controller shall at all times be entitled to issue supplementary instructions on the nature, scope and procedures of the data processing. Instructions may be issued orally or in writing. Oral instructions must be confirmed and documented immediately in writing vis-a-vis the processor.
- 4.3. The processor shall inform the controller immediately in writing if in the processor's view an instruction issued by the controller breaches legal obligations. The processor is entitled to suspend implementation of the instruction involved until it has been confirmed or amended by the controller. If a direct liability of the processor towards third parties or in accordance with GDPR can threaten from the instruction, the processor is entitled to reject the instructions.
- 4.4. The controller must inform the processor immediately stating the reasons if he identifies errors or irregularities regarding the requirements of this agreement or the GDPR in the order results or regarding the activity of the processor.

5. Controller's rights of inspection

- 5.1. The controller is entitled to all rights of inspection required pursuant to the guidelines of the GDPR to observe its obligations under data protection law. The right of inspection exists subject to observance of an appropriate announcement period and during the normal business hours of the processor. The processor must facilitate and contribute to exercise of this right.
- 5.2. The controller must take care that the inspections are only carried out to the extent necessary in order not to disrupt the operations of the processor excessively through the inspections. Should the controller commission an auditor who is a competitor of the processor, the latter is entitled to object to the activity of this auditor.
- 5.3. The processor may, to the extent necessary, make the inspection by the controller dependent on the signing of a non-disclosure-agreement with regard to the personal data and business secrets of other controllers and the technical and organisational measures set up.
- 5.4. If agreed with the controller, the processor may demand remuneration for its activity in connection with an inspection. The performance of the inspection is irrespective of any agreement between the parties on the remuneration to which the processor is entitled.

6. Obligations of the processor

- 6.1. All processing of the personal data shall occur exclusively on the basis of the main agreement and the instructions given by the controller. When transmitting personal data to a third country or an international organisation, the processor shall comply with the provisions of art. 44 et seqq. GDPR. This does not apply if the processor is obliged to a different processing by the law of the European Union or the member states to which the order processor is subject and the requirements of art. 28 (3) no. 1 GDPR are complied with.
- 6.2. The processor shall setup its internal organisation to ensure compliance with the legal data protection obligations. In accordance with article 32 GDPR, he will take appropriate technical and organisational measures to ensure a level of protection appropriate to the risk of varying likelihood and severity for the rights and freedoms of natural persons.
- 6.3. A description of the technical and organisational measures can be found in **Annex 2** to this agreement.
- 6.4. The processor is entitled to alter the measures mentioned if it is ensured that the protection level agreed and the requirements according to art. 32 and 28 (1) GDPR are not undercut.
- 6.5. The processor names the following contact for all concerns of data protection and the execution of this data protection agreement to the controller: *Guido Wirtz, Anton-Brune-Weg 63A, 59519 Moehnesee, Germany, e-mail guido.wirtz@gwconsult.de.*
- 6.6. Persons authorized to process personal data on behalf of the processor have been obligated in writing by the processor to observe confidentiality and the valid legal obligations of data protection. This exceeds the employment relationship for an unlimited period of time. The described compliance with confidentiality and data protection by the employees must be proven to the controller upon request.
- 6.7. The processor shall support the controller taking into account the type of processing and the information available to it in observing the obligations mentioned in art. 33 to 36 GDPR.
- 6.8. Upon legitimate request of the controller, the processor shall provide the former with all information required to prove compliance with the obligations incumbent on the processor according to Article 28 GDPR.

7. Rights of data subjects

- 7.1. The processor will, as far as possible, assist the controller in fulfilling its obligation to respond to requests to exercise the rights of data subjects referred to in Chapter III of GDPR.

- 7.2. If a data subject contacts the processor with a request to this effect and the order processing is affected, the processor shall refer the data subject to the controller provided that an assignment to the controller is possible according to the information provided by the data subject.

8. Breach of data protection regulations, agreements or instructions

- 8.1. In the case of a personal data breach regarding the controllers' personal data, the processor shall without undue delay after having become aware of it, notify the controller about the personal data breach. The corresponding notification shall contain at least the following information:
- a description of the type of breach, if possible, stating the type and quantity of the data affected and categories of the data subjects;
 - the name and contact details of the data protection officer or a different contact point for more information;
 - a description of the probable consequences of the breach of the protection of the personal data;
 - a description of the measures taken or proposed by the controller to eliminate the breach of the protection of personal data and, if necessary, measures to mitigate its possible disadvantageous effects.
- 8.2. The controller alone is responsible for every notification that may be necessary to a regulatory authority or informing the data subjects. The processor shall cooperate to the extent required in this.

9. Sub-processors

- 9.1. The processor shall use the sub-processors stated in **Annex 3** for processing of the controllers' personal data. The processor is obliged to inform the controller of the commissioning of other sub-processors or changes in the subcontracting. In this case FlowMate sends an e-mail to the administrator of the controller's company account. The controller may object to the measure within four weeks after publication (receipt of the objection). The processor shall not implement the changes before expiry of the objection period.
- 9.2. The processor shall observe the conditions mentioned in paragraphs 2 and 4 of art. 28 GDPR for any sub-processor. He must also ensure that the contractual agreements otherwise made with the customer in this respect as well as any supplementary instructions of the customer are also observed by the processors.
- 9.3. If a processor does not process the transmitted data within the territory of the EU or EEA, the processor shall accordingly ensure that this is done exclusively in accordance with the provisions of art. 44 et seqq. GDPR.

10. Remuneration of the processor

The processor shall not be entitled to any separate remuneration for the services rendered by it under this Agreement if this is not expressly agreed otherwise.

11. Liability

The liability of the parties is based on the agreements of the respective contract on the basis of which an order processing is carried out. The direct liability of the parties to a person affected arising from legal provisions of data protection remains unaffected.

12. Term of the Agreement

The term of this Agreement corresponds to the term of the main agreement.

13. Conclusion of the processing services

- 13.1. After provision of the processing services has been concluded, the processor shall at the controller's option delete all personal data unless an obligation for the storage of the personal data exists according to EU law or the law of the member states to which processor is subject.
- 13.2. The controller is entitled to supervise the complete and contractually compliant deletion of the data on the processor's premises.
- 13.3. Moreover, any right of retention of the processor regarding the processed data and the associated data-carriers is excluded.

14. Final provisions

The final provisions of the main agreement shall apply.

List of annexes

Annex 1: Data subjects, data categories and processing purposes

Annex 2: Technical and organisational measures

Annex 3: List of sub-processors