

## **Terms & conditions for using an electronic communication process for signing individual contracts**

### **§ 1 Scope of validity**

- (1) The Terms & Conditions set out herein apply to the use of an electronic communication process for entering into individual contracts in the framework of contractual relationships between the contractor and DZ BANK AG ("Client").
- (2) The undertakings set out in the Annex "**Qualifying Companies**" are authorised to place orders with reference to these Terms & Conditions, whereby, for the purposes of such orders, the authorized undertaking shall constitute the "Client" within the meaning of these Terms & Conditions in DZ BANK AG's stead. In such case, the recipient of the performances on the part of the Client is the respective undertaking named in the aforementioned Annex; the Clients do not assume joint and several liability. Contractor is prepared, also in the relationship to subsidiaries of Client in the meaning of §§ 271, 290 of the German Commercial Code (HGB) and companies affiliated with Client pursuant to § 15 of the German Stock Corporation Act (AktG), to use the process for placing and accepting electronic declarations. Use of the process for placing and accepting electronic declarations in the relationship between contractor and one of the aforementioned entities shall be conditional upon the respective interested entity furnishing contractor with an appropriate declaration of his binding recognition of the provisions set forth in these Terms & Conditions. Upon contractor's receipt of such a declaration, the provisions of these Terms & Conditions shall apply mutatis mutandis to the relationship between contractor and the entity concerned.

### **§ 2 Object**

- (1) The parties would like to use an electronic communication means to sign individual contracts. To this end, offers to sign and accept individual contracts (referred to hereafter as "electronic declarations") are to be exchanged using the electronic communication process (mde – My Document Exchange) explained below.
- (2) The parties will use the communication procedure described in the Annex "**Description of the Use of the Supplier Platform mde (My Document Exchange)**" ("Procedure") to submit and accept electronic declarations.
- (3) These Terms & Conditions regulate the legal framework within which electronic

declarations are to be exchanged. The provisions of these Terms & Conditions are applicable to every electronic declaration even if no explicit reference is made to the provisions of these Terms & Conditions in aforesaid declaration.

- (4) If the parties have signed a framework agreement governing the object of an individual contract, the provisions of said agreement shall apply to the contracts to be signed. Otherwise, the General Purchasing Conditions of the Client concerned shall apply to all other individual contracts to be signed. The above-mentioned regulations shall also apply if the electronic declarations, that will lead to the signing of an individual contract, do not contain any specific references.

### **§ 3 Conditions of use**

- (1) To use the process, contractor must have access to the internet and must maintain an e-mail account. The costs incurred as a result thereof shall be borne by each party.
- (2) Client shall give clearance for contractor to use the process and shall provide the administrator named by contractor (referred to hereafter as "administrator") with a user name and a password which aforesaid must use to identify himself before participating in the process, (jointly referred hereafter as "identification data").
- (3) Contractor shall be responsible for deciding which staff members are to be entitled to submit electronic declarations in his name and on his behalf (referred to hereafter as "staff member/s"). Through administrator, contractor shall independently set up the staff members and their authorisations, providing aforesaid with the corresponding identification data and continuously managing the authorisations.
- (4) When using the process for the first time, contractor shall ensure that administrator and staff members alter the identification data allocated to them.

### **§ 4 Using the process**

- (1) To use the process, the staff member must call up the website of the process named in the initial e-mail. He must identify himself with his identification data when called upon to do so. Client is responsible for examining the identification data of the staff member when registering ahead of an internet session.
- (2) Contractor must adhere to the special conditions for using the process as set out in the appendix and to the user guidance shown to him during the session, and must check that all the data notified to him are complete and correct. If contractor fails to provide the required data, the electronic declaration cannot be conveyed to Client. Client shall not carry out an examination of the substantive

correctness of the data.

- (3) An electronic declaration is deemed to have been received if it is available for the recipient party to call up by entering aforesaid party's identification data. If an electronic declaration is received outside the usual business hours, it is deemed to have been received on the recipient party's next working day. The usual working hours are Mondays to Fridays, with the exception of public holidays, from 8am to 5pm.
- (4) If a party recognises or fears a disruption in the process, it must immediately notify the other party in writing thereof. This is irrespective of whose area of responsibility the cause of the disruption lies. This also applies to proposed periods of downturn for electronic communication exchange due, for example, to scheduled maintenance work or changes to system operations. In both cases, the parties shall, if applicable, agree on a different means of communication for the downtime period.
- (5) The parties acknowledge that legally valid and enforceable obligations can be entered into through the conveyance of electronic declarations. The conveyance, ordering and confirmation through the respective contracting party shall only be carried out by persons who have been authorised for this purpose. The parties expressly waive all rights to object to the validity and admissibility of the contract signed electronically if such objections are raised solely on account of the communication having been established between the parties through the use of electronic communication means.
- (6) Client is entitled at any time to modify the special conditions for using the process, especially the services and procedures regulated therein, for example in the event of changes in statutory regulations, supervisory or technical requirements. It shall only undertake such changes after an announcement to this end has been made and an appropriate deadline set.
- (7) Client is not obliged to maintain the extent of the services and the process. It may at any time suspend, in part or in full, the services or the process after an announcement to this end has been made and an appropriate deadline set.

## **§ 5 Requests for proposal**

If Client is prepared to invite contractor to make a proposal, it shall use the process to send aforesaid a Request for Proposal (referred to hereafter as "RfP") in which the conditions of the RfP and the procedure are described. If contractor would like to make a proposal, he shall use the process to make a declaration to this end to Client based on the conditions of the RfP. He shall give notice of any changes to the conditions stated in the RfP within the framework of his

declaration. Client shall evaluate the proposals of all participants from a professional, commercial and legal viewpoint and thus determine who shall be the desired contracting partner. It will then use the process to convey to the contracting partner thus selected, in accordance with § 6 below, an offer to sign an individual contract.

## **§ 6 Signing of individual contracts**

- (1) If Client is prepared to sign an individual contract with contractor and has lodged the conditions of the desired contract in the process, these shall be notified to contractor. The notification of aforesaid conditions constitutes Client's offer to sign the individual contract in question at the conditions being notified to contractor.
- (2) Contractor shall have the possibility of accepting Client's offer by activating the appropriate confirmation field.
- (3) Contractor's confirmation, or his recognisable action which implies this through the rendering of performances in accordance with the offer of Client, in each case within ten workdays of the start of the contract (start date), shall constitute the conclusion of the individual contract at the conditions stated.
- (4) If contractor has overstepped the deadline set out in sub-clause (3), he may no longer accept the offer. If he still wishes to sign a corresponding individual contract, he will have to make a new enquiry to Client to this end.
- (5) Further details on this can be found in the appendix **"Description of How to Use the Supplier Platform mde (My Document Exchange)"**

## **§ 7 Recording and calling up communication**

- (1) Contractor has the possibility of calling up and printing out the communication which has taken place by means of the process.
- (2) Contractor consents to allow Client to record and store the data conveyed within the context of an order so that the order can be correctly processed and evidenced in compliance with the data protection regulations within the European Union.

## **§ 8 Security**

- (1) The parties pledge to secure their communication system against abuse, in particular against unauthorised access by third parties, and also to prevent data

from being lost in the communication process.

- (2) Contractor shall ensure that the administrator and the staff members keep their identification data secret to avoid abuse. The identification data may not be rendered accessible to third parties. In the event of suspected abuse, contractor shall immediately block the identification data in question so that it cannot be used any further, and shall inform Client thereof.
- (3) The same applies if a previously admitted staff member no longer wants to or is no longer allowed to participate in the process.
- (4) Access to the process shall be automatically blocked for security reasons, entirely or partially, if administrator or a staff member enters the wrong user ID password three times in succession. For the block to be released, contractor shall use the "Forgotten password" feature in the process. Client shall be responsible for releasing the block.
- (5) Client is entitled to bar access to the process at any time. This is deemed to be the case in particular if suspicion of abuse of the procedure exists or if contractor desires the imposition of the block.
- (6) Client shall immediately inform contractor of the imposition of a block unless contractor has instigated the imposition of the block himself.

## **§ 9 Maintenance and changes to the process**

- (1) The process might become temporarily unavailable as a result of short-term maintenance and repair work. Client shall endeavour to carry out maintenance and repair work of this kind outside the usual hours of business.
- (2) Client shall be entitled to alter the process at all times, for example in the event of extensions, or if called upon to do so as a result of changes in statutory regulations or technical requirements. It shall notify contractor in good time if changes are to be carried out.

## **§ 10 Hiring the services of third parties**

- (1) Client is entitled to hire the services of third parties within the framework of these Terms & Conditions so that the obligations pertaining to the agreement can be met. Most notably, the process is to be technically operated by a third party. Irrespective of this, however, Client alone is contractor's partner in within the context of these Terms & Conditions.

- (2) For the purposes of fulfilling the contract, Client is entitled to convey data to service companies within the European Union.

## **§ 11 Liability**

- (1) Client shall be held liable in the full amount, no matter the legal cause (e.g. poor performance, non-fulfilment, delay, warranty, *culpa in contrahendo*, criminal offence etc.), for intent and gross negligence; shall also be held liable in the full amount in accordance with statutory provisions on account of accepting a guarantee, for the existence of a certain condition, for fraudulent concealment of a defect, on account of injury to the life, body and health of persons and for claims relating to sections 1, 4 German Product Liability Law (ProdHaftG).
- (2) In cases other than those above, Client shall be held liable on account of simple negligence only for foreseeable damages and only in the event of a substantial contractual obligation being violated (cardinal obligation). A substantial contractual obligation (cardinal obligation) is deemed to exist if the violation relates to a specifically described contract obligation, the violation of which would jeopardise the attainment of the contract objective, or if the violation relates to an obligation in general, the fulfilment of which is necessary for the contract to be correctly executed in the first place and the fulfilment of which may be regularly relied on.

## **§ 12 Confidentiality**

- (1) The confidentiality commitments of this § 12 are, irrespective of their embodiment (in particular: in writing, verbal, electronic), all information and data relating to all matters of Client which were conveyed to contractor by Client, or of which contractor gained knowledge, regardless of the way in which this occurred (referred to hereafter as "confidential information"). Confidential information includes in particular:
  - a) business secrets
  - b) information which constitute competition-relevant expertise and
  - c) Information protected by banking secrecy or data privacy.
- (2) Contractor shall treat the confidential information confidentially, refrain from forwarding it to third parties subject to the provisions set forth in the following sub-clauses (4) through (7), and protect it against unauthorised access. Confidential information may only be used within the context of the object of the contract. Furthermore, the information may neither be recorded nor otherwise saved, copied, conveyed or used or exploited in any other form for

own purposes.

- (3) This provision § 12 governing secrecy does not cover information,
  - a) which at the time of signing the contract were already generally known or became subsequently generally known without the obligations in the contract being violated, or
  - b) which are already known to contractor at the time they were conveyed and which stem neither directly nor indirectly from Client, or
  - c) which contractor has lawfully received or receives from third parties which are not subject to any obligation to retain secrecy vis-à-vis the other respective party.
- (4) The conveyance of confidential information shall not be associated with any granting of licenses unless another agreement to this effect has been explicitly reached.
- (5) Subject to the provisions of the following sub-clauses, contractor shall only convey to third parties or allow them access to confidential information with the Client's consent. Before confidential information is conveyed or made accessible to a third party, contractor shall obligate the third party in writing to uphold the confidentiality obligations to which he himself obligated himself vis-à-vis Client pursuant to this § 12. Contractor shall furnish Client evidence thereof if called upon so to do. Third parties shall additionally mean companies affiliated with contractor pursuant to § 15 of the German Stock Corporation Act (AktG) (hereafter "affiliated company").
- (6) Deviating from the provisions of the above sub-clause, contractor may convey to an affiliated company or allow it access to confidential information without the consent of Client if this is necessary in the framework of the purpose pursued by this contract. In doing so, contractor shall, within a legally possible-scope, ensure that the affiliated company has been obligated to treat the confidential information in the same confidentiality scope agreed in this contract. Contractor shall be held liable for affiliated companies' compliance with the obligations taken on by him in connection with this contract to which he, either with or without consent, conveys, or allows access to, confidential information. If called upon so to do, contractor shall inform Client of the affiliated companies to which he has conveyed, or allowed access to, confidential information, as well as the nature of that confidential information.
- (7) All of contractor's staff members who, pursuant to the two aforementioned sub-clauses, receive confidential information for rendering performances must have been obligated – possibly in their employment contracts – to treat the

confidential information confidentially and use it exclusively for the objective of this contract. Contractor shall be held liable for his staff members' compliance with the obligations taken on by him in connection with this agreement, both in the period of their employment at aforesaid contractor and afterwards, as well as for aforesaid compliance through accessory agents.

- (8) Contractor may only convey confidential information of Client if this is permitted by statutory regulations or by decrees of public authorities, or if Client has given its consent to aforesaid. Provided this is legally permissible, contractor shall immediately notify Client as soon as he is approached by an authority with a request to provide confidential information of Client, or is subject to other governmental measures.
- (9) After completion of the objective of this contract or if potentially called upon to do so by Client at any time, contractor shall immediately pass over to Client all confidential information received therefrom and still in his possession, and provide written assurance of the complete fulfilment of this obligation. Contractor does not have any right of retention. In the case of information electronically stored on rewritable storage media, contractor can, with the consent of Client, delete the information instead of returning aforesaid. The deletion must be carried out in such a way that aforesaid information cannot be retrieved. The erasure obligation shall not extend to such copies of computer files containing confidential information which contractor saved in the framework of automatic archiving or data backup procedures. If contractor is legally obliged to retain copy material, he may additionally retain the confidential information solely for this purpose. After the statutory retention period has expired, contractor must destroy the confidential information in such way that it cannot be recovered. Deviating from the time period governed in the following sub-clause (10), the confidentiality obligations of this § 12 shall survive for confidential information which has not been returned or erased for the aforementioned reasons until the final destruction thereof.
- (10) The confidentiality obligations of this § 12 shall survive for a time period of 5 (five) years from the end of this contract insofar as the confidential information does not involve information protected under banking-secrecy or data-privacy regulations. Confidential information that is protected under banking-secrecy or data-privacy regulations shall continue to be treated confidentially for an unlimited time period.

### **§ 13 Other provisions**

- (1) The inefficacy of individual provisions of these Terms & Conditions shall not prejudice the efficacy of the other provisions of these Terms & Conditions in their entirety. In this case, the parties shall immediately undertake to replace aforesaid



ineffective provision with a legally-effective provision which comes closest to the intended purpose of the provision that became ineffective. Aforesaid also applies if these Terms & Conditions should be seen to show a gap.

- (2) Contractor's General Business Conditions shall not apply.
- (3) These Terms & Conditions are subject to the Law of the Federal Republic of Germany.
- (4) Place of fulfilment and place of jurisdiction shall be Frankfurt am Main, Germany.

**Annexes:**

- **“Authorised Undertakings” in accordance with § 1(2)**
- **“Description of the Use of the Supplier Platform mde (My Document Exchange)”**

## **Annex: "Description of the Use of the Supplier Platform mde (Document Exchange)":**

### **Access**

The system is an internet platform. Transmission security is ensured via access using SSL-encrypted http protocol.

### **Roll-based views**

Contractor's administrator can view all information allocated to contractor. Contractor's administrator can, at every registration, restrict this view to such information which is to be allocated to the business relation between contractor and Client. The supplier users are set up once by Client at the beginning of the business relation. After this, contractor's administrator can independently set up further staff members for contractor. In all cases, the access data are delivered to contractor's staff member via e-mail (unencrypted) incl. a link that is deposited therein. After accessing the initial data, contractor has sole responsibility for the legitimisation of the access rights, i.e. he independently sets up or deletes new staff members. No other admin rights exist beyond this.

### **Performance recording**

After contractor has rendered his deliverables and services, he shall use the process to give Client notice of this in accordance with the specifications. Contractor must document his performed activities in a Record of Performance which both qualitatively and quantitatively details the working time spent in a transparent and comprehensible manner.

This is carried out in the activity recording area in mde in the form of a service entry sheet (abbreviated here as "LEB") or in the resource management system provided by Client, in either case no later than on the second working day of the following month.

Contractor can empower such staff members to record the activities who are only able to conduct this activity recording on the platform but who are not, for example, allowed to accept an offer (named in the "Order" process).

After Client has confirmed by means of the process that the supplies and services have been correctly rendered, contractor is entitled to prepare an invoice with reference to the order number in the amount of the documented performance.

### **Password protection**

After the first log-in, the user is ordered by the process to change the initial password. Passwords are deposited in encrypted form in the database and are neither legible nor traceable. If a password is lost, the user can demand a new password from the process by using the "password forgotten" functionality. In this case, the password is reset and a new random-generated password is sent to the user's email address deposited in the system.



### **Adjustment or rejection of an order**

If the supplier is not in agreement with the offer, he can either adjust the contents of the offer or reject aforesaid.

If an offer is adjusted, Client must accept the adjusted offer to enable a legally valid agreement to come about.

In the event of rejection, Client can draw up a new offer.

In the event of contractor no longer wanting to render the deliverables and services, or no longer wanting to render aforesaid in full, or Client no longer wanting to accept them or no longer wanting to accept aforesaid in full, the party concerned can submit an offer aimed at terminating the contract by setting the delivery completed sign (abbreviated in the process as "EKZ"). If the respective other party is prepared to accept the offer to terminate the contract, it can submit a declaration to this end by confirming the delivery completed sign by appropriately marking it as such. The acceptance declaration is deemed received if the party, which no longer wants to render or receive the agreed deliverables and services or no longer wants to render or receive aforesaid in full, is able to call up said acceptance declaration in the process under usual circumstances.

The contract ends with the receipt of the acceptance declaration, with the consequence that contractor is only entitled to issue an invoice for the supplies and services rendered by him up to this point in time.

## **Annex: Qualifying Companies in Accordance with § 1(2)**

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Platz der Republik  
60325 Frankfurt am Main  
Germany

Reisebank AG  
Platz der Republik 6  
60325 Frankfurt am Main  
Germany

VR Smart Finanz AG  
Hauptstrasse 131-137  
65760 Eschborn  
Germany

VR Smart Finanz Bank GmbH  
Hauptstrasse 131-137  
65760 Eschborn  
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VR Smart Guide GmbH  
Hauptstrasse 131-137  
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