

Agreement on the Joint Processing of Personal Data pursuant to Art. 26 GDPR

between

Refurbed Marketplace GmbH
Jakob-Lind-Straße 7, 1020 Vienna, Austria

“Data Controller 1”

and

the Supplier
“Data Controller 2”

1. Subject of the Agreement

This Agreement determines the rights and duties of the two Data Controllers (hereinafter also referred to as “Parties”) with regard to the joint processing of personal data. This Agreement shall apply to all activities of the Parties’ employees or the Parties’ contracted data processors involving the processing of personal data. The Parties have jointly determined the means and purposes of the processing activities, which are described in more detail hereinbelow. To this end, they are joint data controllers in the definition of Art. 4 no. 7 GDPR.

2. Definitions

The following definitions according to Art. 4 GDPR apply:

(2) Third Country

A country located outside of the EU/EEA.

(3) Main Agreement

Contract (usually, a contract for work and services) in which all details of the processing are described.

(4) Subcontractors

Service providers hired by the contractor, whose services and/or works the contractor requires for the performance of the services to the client that are described in this contract.

(5) Processing

Any operation or set of operations, which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by

transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

3. Description of the Processing

(1) The purpose, kind and scope of the processing of personal data are defined in the Main Agreement concluded between the Parties and the contractual provisions included additionally in this regard if applicable.

(2) The services to be performed by each Party are described in the Main Contract.

(3) The purposes of the jointly performed processing are:

- a) Customer acquisition
- b) Customer data management
- c) Shipment of the object of the contract
- d) Issuance of the invoice
- e) Assurance of the contractually agreed guarantee

(4) Objects of the processing of personal data are the following data types/categories

- a) Personnel master data (e.g. first name, last name)
- b) Contact details/communication data (e.g. telephone number, email address)
- c) Contract master data (contractual relationship, interest in products or contracts)
- d) Customer history
- e) Contract billing and payment data

4. Period of the Contract

4.1 Contract Period

(1) The period of this Agreement shall be dependent on the term of the supplier guide (hereinafter referred to as the “Main Contract”) unless stated otherwise in the provisions of this Agreement.

(2) The right of termination without notice for good cause remains unaffected thereof.

(3) Terminations require the written form for validity.

4.2 Right of special termination

(1) Both Parties can terminate the Main Contract and this Agreement at any time and without observation of a notice period (“Extraordinary Termination”) in case of a serious violation of the data protection regulations or provisions of this Agreement by the other Party. A serious breach is given in particular if a Party fails or has failed to a significant extent to fulfil the duties defined under this Agreement, especially the agreed technical and organisational measures.

(2) In case of insignificant breaches by one of the Parties, the other Party shall set an appropriate period for remedy. If the breach is not remedied within due time, the other Party shall have a right to extraordinary termination.

(3) In the event of an extraordinary termination, the Party having fault for the termination shall refund all costs to the other Party, which are incurred due to the early termination of the Main Agreement or this contract.

5. Responsibilities

(1) Each Party warrants compliance with legal regulations in particular as relates to the legitimacy of the data processing carried out by them. However, both Parties shall be equally responsible for the legitimacy of the joint processing.

(2) The Parties shall take all required technical and organisational measures so that the rights of the data subjects, in particular, pursuant to Chapter III GDPR, can be or are assured within the legally prescribed periods.

(3) The registered office of Data Controller 1 shall be deemed its headquarters and a reference for the determination of the competent supervisory authority.

5.1 Warranty for the rights of data subjects

(1) Data Controller 1 undertakes to provide the obligatory information pursuant to Art. 13 and Art. 14 GDPR to the data subjects.

(2) Data Controller 1 undertakes to make the information to which they are eligible in accordance with Art. 15 GDPR available to data subjects on their request.

(3) The data to be processed within scope of this Agreement shall be corrected, deleted or blocked solely in accordance with the contractual agreement concluded.

(4) Data Controller 1 undertakes to process requests from data subjects for the correction of their data in accordance with Art. 16 GDPR.

(5) Data Controller 1 undertakes to process requests by data subjects pursuant to Art. 17, Art. 18 GDPR for the deletion or restriction of the data and inform the data subjects thereof pursuant to Art. 19 GDPR.

(6) Data Controller 1 undertakes to process the requests from data subjects according to Art. 20 GDPR to be given the data that they have made available to one of the Data Controllers and to make the data available in a common and machine-readable format.

(7) Data Controller 1 undertakes to process objections of data subjects in accordance with Art. 21 GDPR. Data Controller 1 shall then cease the processing of the personal data, unless it can prove compelling reasons for the processing, which qualify for protection and override the interests, rights and freedoms of the data subject, or if the processing serves the purpose of asserting, exercising or defending against legal claims. In this case, the reasons shall be documented in detail.

(8) Data Controller 1 shall act as a point of contact for the data subject.

(9) Data Controller 2 undertakes to support Data Controller 1 in the assurance of the rights of data subjects (paras. 1 to 8) to the best of its efforts.

5.2 Provision of data according to Art. 26 (2) GDPR

(1) Data Controller 1 undertakes to make the obligatory information pursuant to Art. 26 (2) GDPR available to the data subjects. Thus, Data Controller 1 also has to make the essential parts of this Agreement available to the data subjects in a transparent manner. This also

includes the information about the actual functions and relationships of the joint data controllers, in particular also relations with the data subjects.

5.3 Functions of the processing

- (1) Data Controller 1 is responsible for the processing:
 - a. Gathering of customer data
 - b. Management of customer requests
 - c. Handling of complaints
 - e. Transmission of the customer data to Data Controller 2 for shipment and warranty claims, as well as guarantee
- (2) Data Controller 2 is responsible for the processing:
 - a. Transmission of the content of the contract
 - b. Issuing the invoice
 - c. Processing of the customer data transmitted by Data Controller 1 for guarantee/warranty conditions

6. Duties relating to Processing

6.1 General duties

(1) Both Parties must seek information promptly and complete extent if they discover any errors or irregularities with regard to data protection regulations in the check of the processing activities and/or results of the commissioning.

(2) If a data subject should contact one of the Parties directly for the purpose of exercising his/her rights as data subject, in particular, for correction and deletion of his/her data, this request shall be forwarded immediately to the other Party, irrespective of the duty to guarantee the rights of the data subject.

(3) Data Controller 1 shall maintain a record of processing activities in the definition of Art. 30 (1) GDPR.

(4) Both Parties are equally subject to the duties pursuant to Art. 33, Art. 34 GDPR to provide information to the supervisory authority and the data subjects, respectively, who are concerned in case of a breach of the protection of personal data.

(5) Both Parties are obligated to treat all business secrets and data security measures of the respective other Party as confidential of which they obtain knowledge in the course of the contractual relationship.

(6) Documentation, which serves as verification that the data processing is correct, shall be retained by each of the Parties, beyond the end of the contract, according to the respective retention periods.

(7) Each Party shall appoint a data protection officer. Should no statutory duty to make such an appointment apply, a point of contact with corresponding rights and duties shall be appointed. Any change of the data protection officer(s) or of the point of contact shall be reported to the other Party without delay.

6.2 Warranty of confidentiality

(1) The Parties bindingly declare that they have obligated all persons assigned with the data processing prior to commencing their activity for confidentiality and that these persons are subject to an appropriate legal confidentiality obligation.

(2) If any protected professional secrets are affected by the processing, the Parties bindingly declare that all persons assigned with the data processing have been obligated for confidentiality prior to commencing their activity. All persons assigned with the processing have been informed that the confidentiality obligation will also stay in effect after the termination of their work and their leaving the company.

(3) In addition, all persons have been obligated regarding the duties to observe the Parties' business and trade secrets.

6.3 Warranty for the security of the processing

(1) Both Parties undertake to take the measures to arrange their company-internal organisation in their respective area of responsibility in such a way that it meets the special requirements for data protection. Each Party shall take the technical and organisational measures in fulfilment of the requirements of the corresponding data protection regulations so as to appropriately secure the data against abuse and loss.

(2) The technical and organisational measures are subject to technical progress and further development, and they shall be kept up to date wherever possible. To this end, each Party is permitted, alternatively, to implement verifiably adequate alternative measures. It must be assured at the same time that it is not fallen below the contractually agreed protection level. Significant changes shall be documented.

6.4 Correction, restriction of processing, deletion and the return of data media

(1) During the period of validity of the Agreement, a Party shall delete or block the data at subject of the contract only in agreement with the respective other Party.

(2) Data Controller 1 shall organise the destruction of data media and other materials in a manner verifiably in accordance with data protection regulations if this is to be done during the running processing.

7. Commissioned Data Processing

(1) Each Party undertakes to conclude a contract pursuant to Art. 28 GDPR when hiring commissioned data processors.

(2) The place where the contractually agreed data processing is performed shall be located exclusively within the Member States of the European Union or in another signatory state of the Treaty on the European Economic Area. Any relocation to a Third Country shall be permissible only if the special requirements of Art. 44 seqq. GDPR are fulfilled.

(3) If commissioned data processors are contracted, the respective commissioned data processor must be obligated under a contract by the hiring Party to observe the duties arising from this Agreement.

(4) Each data processor must assure that the duties arising from this Agreement will also be fulfilled by subcontractors if subcontractors are hired.

8. Reporting duties in the case of data breaches

(1) The Parties shall inform each other of any breaches of the security of personal data. Also reasoned cases of suspicion in this regard shall be reported. The notification shall be sent at the latest within 24 hours from taking notice of the relevant event to an address informed of by the other party. The notification shall include a description of the nature of the infringement on the protection of the personal data.

(2) It shall likewise be reported immediately if significant disruptions of the processing of the orders and violations by the Party or its employees of the provisions of data protection regulations or the terms agreed in this contract occur.

(3) The Parties shall inform each other immediately of any audits or measures by supervisory authorities or other third parties where these relate to the joint data processing.

9. Liability

(1) Both Parties and, if applicable, any commissioned data processor shall be liable as joint and several debtors to the relevant data subject for any damages, Art. 82 GDPR, which are caused by processing not in accordance with the GDPR.

(2) Insofar as the Parties are obligated to pay damage compensation to the data subject, it shall remain reserved for each Party to file recourse against the data processor.

(3) In the internal relationship, each Party shall be liable to the other Party for the damages having been caused by the processing and which fall within its responsibility, Art. 82 (4) (5) GDPR.

(4) In the internal relationship between the Parties and any potentially commissioned data processors, the data processor shall be liable for the damage caused by processing, whereas only if it

a. has not fulfilled its duties specifically imposed on it by the GDPR, or

b. has acted with disregard for the legitimately issued instructions of the client or if it has acted contrary to these instructions.

(5) Further liability claim pursuant to the general laws remain unaffected.

10. Severability Clause

(1) If individual provisions of this Agreement should be fully or partly invalid or impracticable or become invalid or impracticable in consequence of changes in the law after the conclusion of this Agreement, the remaining provisions of the contract and the validity of the contract on the whole shall remain unaffected.

(2) Instead of the invalid or impracticable provision, such valid and practicable provision shall apply, which comes closest to the meaning and purpose of the void provision.

(3) If the contract should prove to make omissions in provisions, such provisions shall be deemed agreed that are equivalent of the meaning and purpose of the contract and which would have been agreed if this aspect had been considered.

(4) If there are several effective and practicable provisions, which can replace any invalid provision named under § 8 (1), the provision must be chosen, which assures the protection of the data of the data subjects in accordance with the meaning and purpose of this contract.

(5) Austrian law applies including the GDPR.