

General Terms of Use for Mercateo

§ 1. Exclusivity of these provisions, terms and conditions for Partners

1. In the relationship between Mercateo and the Partner, the provisions and, if applicable, the respective service descriptions as amended from time to time and set out below shall exclusively apply, unless otherwise agreed upon, to individual cases.
2. The application of any provisions which are not subject to these General Terms of Use, in particular, the General Terms and Conditions of the Partner or provisions which contradict these General Terms of Use by one party shall be expressly excluded. Such regulations shall not be included even in the event that there is no reaction or explicit objection to a declaration aimed at their inclusion, e.g. through reference in business documents, delivery notes, or the like. Conduct implying an intent, in particular the rendering of the agreed service or payment, or its unconditional receipt, respectively, shall not be deemed as consent to the inclusion of General Terms and Conditions.

3. Definitions:

- a) The Partner shall refer to the contractual partner who interposes the Mercateo procurement platform in order to sell their products and/or services to Customers on the basis of an existing framework or supply agreement.
- b) The Customer shall refer to the company to which the Partner delivers their products and/or renders services on the basis of an existing agreement.
- c) Exclusive Area shall refer to a product catalogue of the Partner displayed, not in the public section of the Mercateo platform, but exclusively in the closed section to Customers with whom the Partner has entered into framework or supply agreements or who were given access to the Exclusive Area by the Partner.
- d) Agreement in this document shall refer to the contractual relationship between the Partner and Mercateo in connection with the products BusinessShop and/or Partner-Webshop.
- e) Contractual Territory shall refer to the territorial validity of the contractual relations. The Delivery Area chosen by the Partner shall be considered the Contractual Territory for the purposes of the Agreement.

§ 2. Subject matter

1. The Partner shall be granted the opportunity to integrate their catalogue or webshop into the Mercateo platforms with the goal of enabling Customers to place orders through them.
2. A contractual relationship regarding the delivery of products or the rendering of services shall exist solely between the Customer and the Partner. Solely the Partner shall be entitled and obligated by agreements concluded on the Mercateo platform.
3. If agreed upon, Mercateo shall forward any orders placed by the Customer from the catalogue or Partner-Webshop in electronic form as an order placed by the Customer with the Partner.

§ 3. Provision of the data by the Partner

1. Catalogue-based connection
 - a) The Partner shall provide Mercateo with a product catalogue which is suitable for online operation, in a data format that corresponds with Mercateo's technical environment (BMEcat or a database language determined by Mercateo), in an electronically readable form, free of charge and for unrestricted use in the Exclusive Area of the Mercateo platform of the delivery area relevant to the Customer who was invited or granted access by the Partner.

- b) The Partner shall grant Mercateo a non-exclusive, revocable, unrestricted right to use the content of the product catalogue, in particular the product images and product descriptions, free of charge for the duration of the contractual term. The granted right of use shall include, in particular, the right to use, reproduce, demonstrate, present, distribute, adjust, alter or reformat the data, feed in other data, create and use new materials by processing all data that was made available. Feeding in new data, altering or adjusting the data that were made available shall be made exclusively for the purpose of improving the product presentation on the Mercateo platform. Mercateo may sublicense the granted right of use solely to affiliated companies. Mercateo shall observe the trademark and copyrights of the Partner; Mercateo shall not alter the Partner's trademarks or product images in such a way that they no longer comply with the form that was originally provided (excepting size adjustments, as long as the aspect ratio is observed and no falsification is to be assumed).

2. Non-catalogue-based connection

For the non-catalogue-based connection, the Partner shall grant Mercateo the simple right to use the content connected to Mercateo worldwide, free of charge, for the duration of the contractual term, particularly for product images and product descriptions; to all works, parts, databases, primarily for reproduction, distribution, revision, including the right to use this content online, also for advertising and marketing purposes and to promote and/or search/find the Mercateo platform on search engines.

§ 4. Changing the catalogue and article prices

1. The Partner may change integrated catalogue and/or article prices or the conditions of supply to be displayed by Mercateo at any time by updating the catalogue. These changes shall become effective upon integration of the catalogue update made by the Partner (going live).
2. Irrespective of this, conditions preceding any changes made to the catalogue may apply to orders which were placed by the Customer prior to the changes being made in the Customer's ordering system but not transmitted to the Partner until after the changes were made to the catalogue because of an intermediary approval process of the Customer.

§ 5. Obligations of the Partner

1. The Partner shall ensure constant availability through the predefined communication channels.
2. The Partner shall notify the Customer directly and without delay of any processing delays, lack of availability or other disruptions regarding the delivery and/or deviations from the agreed conditions.
3. The Partner shall settle any objections or defences as well as any defaults in performance directly and immediately with the Customer. The Partner shall fulfil all existing warranty and guarantee obligations directly with the Customer. The Partner shall be obligated towards Mercateo to fulfil directly any such warranty and guarantee claims made towards Mercateo.

§ 6. Obligations of Mercateo

1. Mercateo shall integrate the Partner's offer into the Mercateo platforms in the selected Contractual Territories in accordance with the type of connection agreed upon.
2. Mercateo shall be solely responsible for the preparation of the platform, the presentation and the integration of the Partner's offer.

3. The scope of any other services, their technical configuration and potential content shall depend on the module selected by the Partner.

§ 7. Liability, assurance, indemnity of the Partner

1. The Provider shall ensure that the offered services and products are in accordance with all statutory regulations and correspond with generally accepted moral values; particularly regarding public regulations which must be observed and the respective permissions or licences which must be obtained. If a service or product no longer complies with these preconditions, the Partner shall notify Mercateo of this circumstance without delay and abstain from advertising or presenting the offer on the Mercateo platform in due time.
2. The Partner shall be solely responsible for the presentation of their services and products at Mercateo. The Partner shall assure that all data, images and product descriptions as well as any other content used by them do not infringe the rights of any third parties. The Partner assures in particular that they are authorised to use content from third parties, particularly third-party trademarks, to grant this right Mercateo for the purposes of fulfilling the Agreement, particularly with regard to making data which were transferred to Mercateo publicly accessible.
3. The Partner shall be obliged, in particular, to provide all products and services offered at Mercateo in the selected delivery areas and to ensure delivery to the Customers within the indicated delivery/processing time.
4. The Partner shall indemnify Mercateo against all claims which third parties assert against Mercateo due to and/or referring to
 - a) non-compliance with one of the requirements set out in sections 1 and 2;
 - b) an infringement of trademark, industrial design, utility model, copyright, patent rights of third parties or the competition law, in particular the German Unfair Competition Act (Gesetz gegen den unlauteren Wettbewerb, UWG), by conduct of the Partner, in particular with regard to the services and products offered by the Partner;
 - c) an infringement of statutory and/or the contractual provisions regarding the handling of third-party data by the Partner;
 - d) other conduct or omissions by the Partner which do not comply with the Partner's duties.
5. In particular, the indemnity shall include the performance which Mercateo has to render for third parties, such as compensation for damages, contractual penalties due to the contravention of declarations of discontinuance or commitment which are under contractual penalty, or fines, and the expenses incurred by Mercateo due to a claim, such as costs incurred by Mercateo for the appropriate protection of their rights. Mercateo shall place a list of all declarations of discontinuance and commitment signed by Mercateo to the Partner at <http://www.mercateo.com/corporate/unterlassungserklaerungen/>. The Partner shall actively take note of the list and review if the matters of fact which have led to the respective declarations of discontinuance and commitment might be affected as well by the Partner's catalogue or its presentation on the Mercateo platform. Mercateo shall notify the Partner of any amendments/additions to the list via e-mail so that the Partner is able to fulfil their duty to review.

§ 8. Liability of Mercateo

1. Mercateo shall not be held liable for limited capacity or availability (e.g. system failures, non-accessibility, non-availability, data loss) which were not caused by Mercateo, particularly those caused by reasons which are beyond Mercateo's control (e.g. disruptions or failures of the telecommunication network). Mercateo shall not be held liable if they were caused by technical or operational aspects which are within Mercateo's control but do not exceed a limit of 0.5% of the hours in one year. Previously announced maintenance work between 10.00 pm and 6.00 am shall not be deemed a failure. Limited capacity or availability shall not represent faulty performance on Mercateo's part.
2. Irrespective of the previous statement, Mercateo shall be fully liable for damages sustained by a contractual partner, regardless of the

legal reason, arising from injury to life, body, or health attributable to a failure by Mercateo, their statutory representatives, or Mercateo's vicarious agents to comply with their duties, as well as any other damages which are based on an intentional or grossly negligent failure by Mercateo, their statutory representatives, or Mercateo's vicarious agents to comply with their duties.

3. In the case of other damages being attributable to ordinary negligence, Mercateo shall be liable in the event of an infringement of an essential contractual obligation. However, the amount for which Mercateo is liable shall be limited to the damages that had been foreseeable at the time of the conclusion of the Agreement and that are typical for the nature of the Agreement; essential contractual obligations are those whose fulfilment characterises the Agreement and on which the Partner may rely. Liability in accordance with the Product Liability Act (Produkthaftungsgesetz; ProdHaftG) shall remain unaffected.

§ 9. Data protection

1. The parties shall comply with the applicable laws and agreed provisions on data protection and pledge the persons entrusted by them with the performance of this Agreement act in an appropriate manner regarding the compliance with the laws and the agreed provisions on data protection.
2. The Partner shall undertake to collect the minimum amount of data possible from the Customer, to notify any Customer on the nature, extent and purpose of the collection, the processing and use of personal data as well as potential rights of objection in a data privacy statement.
3. The Partner shall not forward the Customer data transmitted by Mercateo to third parties in any way, e.g. by means of sale, exchange or any other way, unless they had already been available to those parties.
4. The Partner shall delete any and all Customer data obtained from Mercateo when discontinuing or suspending the offer. This shall not apply if the Partner has received express consent from the Customer to use the data. If there are statutory regulations and/or reasons for preserving evidence which prohibit a deletion at the time, the data shall be locked; it must be deleted as soon as locking it is no longer justifiable.
5. The Partner shall delete, upon request of the Customer, the data transmitted by Mercateo.
6. If the Partner violates the foregoing provisions, Mercateo shall have the right to demand the deletion of all data obtained from Mercateo by the Partner, unless legal reasons prohibit such a deletion. Section 4, paragraph 3 shall apply in such an event.

§ 10. Confidentiality

1. Each party shall be obligated to maintain confidentiality towards third parties regarding all trade and industrial secrets of the other party of which the party acquires knowledge in the scope of the performance of this Agreement, regardless of whether these trade and industrial secrets are designated as such or as confidential or classified information. In any case, the other party's trade and industrial secrets must not be used for purposes beyond the scope of this Agreement.
2. The confidentiality obligation shall not apply to any information, or shall cease to apply to former trade and industrial secrets which (i) are publicly available or become publicly available without this being attributable to an infringement of this Agreement by the party obligated to maintain confidentiality; or which (ii) the party obligated to maintain confidentiality has received from a third party which is authorised to disclose it to this party and the public. The party, which refers to this exception, shall bear the burden of proof.

§ 11. Contractual period, termination of the Agreement

1. This Agreement is concluded for an indefinite period of time. The Agreement shall become effective upon Mercateo's express declaration of acceptance towards the Partner; in the absence of such a declaration, by the activation of the Partner's catalogue or Partner-Webshop.
2. The Agreement may be terminated by written notice with a term of three months from the end of the month of notification.

3. If the Partner ends the supplier relationship in a manner which is contrary to the Agreement and, as a consequence, the contractual relationship between Mercateo and the Customer cannot be fulfilled, the Partner shall indemnify from Mercateo for any damage resulting from these actions. The same shall apply vice versa to the benefit of the Provider in the event that Mercateo terminates the relationship in a manner which is contrary to the Agreement. Irrespective of the above, the Partner shall notify the Customer without delay of the termination of the Agreement.
4. The parties agree that notwithstanding a termination of this Agreement, orders that are not completed at the time at which the termination becomes effective shall be duly processed in accordance with this Agreement.
5. Furthermore, the parties agree that the obligations regarding the indemnity pursuant to section 7 shall continue to apply after the termination of this Agreement as long as third parties assert claims against Mercateo or as long as the warranty periods last.
6. The confidentiality obligation pursuant to section 10 shall remain in force after the termination of this Agreement

§ 12. Set-off

With the exception of the aforementioned regulations, the Partner may offset against payment demands of Mercateo only with such own demands that have previously become res judicata or that are uncontested. Counterclaims arising from the same contractual relationship shall be excluded from the aforementioned prohibition of setoff.

§ 13. Jurisdiction, governing law and language

1. The exclusive place of jurisdiction for all disputes arising from or regarding this Agreement as well as about its conclusion and its validity shall be the location where the Mercateo company premises executing the Agreement is registered.
2. This Agreement, in particular its conclusion, validity, form, execution, termination and settlement shall be governed by the law which is applicable to the Mercateo company executing the Agreement. The United Nations Convention on Contracts for the International Sale of

Goods shall be excluded. The same shall apply to unilateral legal transactions and acts that are similar to business transactions relating to this Agreement.

3. The German version of the Agreement shall be authoritative when interpreting it or in the event of any dispute because of or relating to the Agreement as well as its conclusion or validity. Any translated versions shall be provided by Mercateo to the Partner without warranty for the correctness of the translation.

§ 14. Severability clause, amendments of the terms of use

1. In the event that one of the foregoing provisions is or becomes invalid or void, the validity of the other provisions shall remain unaffected. Unless the parties individually agree otherwise, the invalid or void provision shall be replaced by the appropriate statutory provision.
2. Should it become apparent after the integration of the data that these General Terms of Use do not regulate a circumstance which the parties would have regulated if at least one party would have considered it at the conclusion of the Agreement, such regulatory gap shall be filled by the respective statutory provision, unless the parties individually agree otherwise.
3. Mercateo reserves the right to amend these General Terms of Use as well as all other documents relevant to any agreements with effect for the future, as far as essential regulations of the contractual relationship are not affected hereby and as far as it is necessary for the adjustment to developments which were not foreseeable at the time of the conclusion of the Agreement, and if their non-consideration would significantly disrupt the balance of the contractual relationship. In such an event, Mercateo shall notify the Partner of any amendments before they come into effect. The amendments shall be deemed to be accepted if the Partner does not object to them in writing within four weeks of being notified of the amendments. In the event that the Partner objects to a change, Mercateo shall be entitled to terminate the contractual relationship in accordance with the contractual period of notice.