

Annex 2: General Terms and Conditions Digital Junheinrich Products

General Terms and Conditions Digital Jungheinrich Products

Valid from March 2019

A. Scope

1. These General Terms and Conditions for Digital Jungheinrich Products (hereinafter General Terms and Conditions) apply to all our offers, contracts of sale, contracts for work and services, including consultancy and other contractual services in business dealings, relating to Digital Jungheinrich Products. They apply exclusively. Conditions deviating from these General Terms and Conditions are hereby expressly controverted. These General Terms and Conditions apply even if we make delivery without reservation being aware of the customer's differing terms and conditions.
2. In case of an ongoing business relation, these General Terms and Conditions also apply to all future transactions with the customer unless other conditions are expressly included. Furthermore, these General Terms and Conditions also apply to all agreements materializing as a result of a supply contract entered into.

B. Contractual Item

1. The contractual item of this terms and conditions is to offer the use (rental) of the Digital Jungheinrich Product in the frame of the module chosen by the customer by way of an individual contract. Access to the Digital Jungheinrich Product is provided via the Internet through online retrieval by means of a supported browser (see **Technical requirements of use** letter D). The offer of use is limited to the term defined in the relevant individual contract.
2. In addition, these General Terms govern the provision of the hardware possibly required for use of the Digital Jungheinrich Product. In case necessary hardware will be provided, the scope of the hardware and the consideration payable in respect thereof are laid down in the relevant individual contract.
3. Any services (support, training, etc.) agreed additionally between customer and us are agreed in **Performance Specification**.

C. Scope of Services / Provision of Services

1. Digital Jungheinrich Products shall be operated, maintained and made available to the customer as "software as a service". The range of function follows conclusively from the **Performance Specification** laid down in the relevant individual contract.
2. We shall transmit to the customer the first access data for identification and authentication on the customer's initial log-in required for the use of the Digital Jungheinrich Product (hereinafter "**Access Data**"). Furthermore, we shall make available to the customer in electronic form online for call-up a software documentation including notes on its use in German and/or English. The customer shall not be entitled to process, disseminate or make available to the public the documentation or user instructions.
3. We shall be responsible for operating and maintaining the Digital Jungheinrich Product. The average availability of the Digital Jungheinrich Products shall be 98 per cent on an annual average. Excepted shall be the required scheduled maintenance work as well as failures beyond our control such as especially force majeure. Upon delivery of the "product", we shall inform the customer, or the contact named by it, about the planned maintenance intervals. However, we expressly reserve the right to perform maintenance work if required also without advance notice. This shall apply in particular if so required for data integrity and operational safety.
4. We shall be entitled to take all the required and appropriate measures in order to ensure the safety of the Digital Jungheinrich Product, particularly if the customer fails to satisfy contractual obligations in that regard. We may in particular request the customer to change its access data, to provide additional information for authorization and to limit or terminate access, provided that the use of the Digital Jungheinrich Product or access to it by the customer presents a safety risk.
5. The same shall apply to the trouble-free operation of the Digital Jungheinrich Product. Should such operation be impaired or endangered as a result of defective truck hardware, we shall be entitled to take the technically required and appropriate measures.
6. We shall be entitled, but not obliged, to extend and develop further the content and range of the Digital Jungheinrich Product and the additional services. We reserve the right to offer extensions and further developments only against payment of an additional consideration. If after entering into the Agreement we provide extended or additional functions without charge, they shall be considered a voluntary service by us.
7. Besides, we may change the range of the function of the Digital Jungheinrich Product at any time to a degree acceptable to the customer. The change is acceptable if it becomes necessary for an important reason, for instance, as a result of disruptions in the performance of services or for safety reasons and essentially the performance features defined in the **Performance Specification** and the main performance obligations of us remain the same. We shall inform the customer in duly in advance about important technical modifications (e.g. a release).

8. We shall take data backup measures regarding the software and the data provided by the customer every day, which will be retained for 30 days. An individual check for accuracy and completeness of the data security measures will not be made and is not owed.

9. To perform the services, we shall be entitled at our discretion to instruct sub-contractors as vicarious agents.

D. Technical Requirements for Use

1. Providing access to the Internet does not form part of the Agreement. The customer shall be solely responsible for the provision and functional reliability of its Internet access including the transmission paths of its computer.
2. The customer must meet the requirements listed in **System Requirements** for the Digital Jungheinrich Product to function flawlessly.
3. The location for providing the performance is the exit point of the computer centre. The customer must independently see to it that it is able to accept performance.

E. Rights of Use

1. For the term of the Agreement, we shall grant the customer limited to the purposes approved herein a non-exclusive licence to access and use the relevant Digital Jungheinrich Product. This licence shall include the right to enter customer content into the Digital Jungheinrich Product and/or to call up and download content. Without the express written consent of us, this licence must not be sublicensed or reassigned, nor be used for the benefit of third parties.
2. The customer may use the Digital Jungheinrich Product for an indeterminate number of users unless the number of accounts acquired by the customer is limited pursuant to **Performance Specification** hereof.
3. The customer agrees not to duplicate, disseminate, modify or create derivatives of the software or other components of the Digital Jungheinrich Product.
4. The customer grants us a straightforward, spatial and unlimited in time (beyond the term of this Agreement) right to use all data and information he transfers while using the Digital Jungheinrich Product or respectively that are generated with the Digital Jungheinrich Product for our purpose, especially for the purposes of evaluation and further development of Digital Jungheinrich Products. These rights of use shall also be available to our affiliated companies. The evaluated data may also be made available to third parties in anonymized form.
5. We shall be entitled to hold available beyond the term of this Agreement content of the customer as far as technically or legally required. In particular, we shall be entitled to keep backup copies of the content provided by the customer and to store such information temporarily or permanently as required for bookkeeping, documentation and settlement purposes. When using the data, we shall at any time comply with applicable data protection provisions (GDPA).

F. Involvement of the Customer

1. Operating the Digital Jungheinrich Product shall be incumbent upon the customer.
2. The customer agrees to use the access data solely for the purpose of the contractually admissible data exchange via the Digital Jungheinrich Product and may make them available only to the authorized employees in each case. The customer agrees to inform us immediately if the access data are suspected of possibly having become known to unauthorized persons. If the customer culpably violates this obligation and an unauthorized third party is culpably enabled to use the Digital Jungheinrich Product, a contractual penalty of three times the monthly consideration shall be incurred. In addition, we shall be entitled to terminate the contractual relationship without notice. We reserve the right to prosecute further claims, for instance based on the Copyright Act, particularly also other claims for damages.
3. The customer shall himself protect its data regularly and in a risk-conforming way. We recommend that the customer should call up and check the data regularly (at least once a week). Should the customer notice any inconsistencies in the data interchange, the customer shall be obliged to notify us in writing.
4. The customer shall ensure that it will comply with all applicable legal provisions, particularly of the copyright and data protection laws, when using the Digital Jungheinrich Product. The customer shall indemnify us against all claims by third parties which they assert against us on account of the use of the Digital Jungheinrich Product by the customer. We shall immediately inform the customer about claims asserted by third parties and shall make available on request the information and records required for a defence. Moreover, we shall either leave the customer to defend the case or in consultation with the customer take over the defence. Particularly, we shall neither acknowledge nor stipulate claims asserted by third parties without consultation with the customer. The provisions of this item shall apply mutatis mutandis to contractual penalties and to regulatory or administrative fines imposed by authorities or courts, to the extent the customer is responsible.
5. We shall be entitled to block the access to the Digital Jungheinrich Product if
 - there are indications that the customer's access data were or are being misused or an unauthorized third party was or is being permitted to

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use them or the access data are being used by more than one natural person;

- there are indications that third parties have otherwise gained access to the Digital Junheinrich Product made available to the customer;
- the blockage is required for technical reasons;
- we are bound to block the Portal on account of statutory, judicial or official provisions and/or orders;
- the customer is in arrears with payment of the agreed consideration for more than two weeks;
- the customer has supplied wrong or invalid contact data and any communication between the contracting parties is no longer possible.

We shall give the customer notice in text format of the blockage not later than one working day in advance to the extent that such notice is acceptable considering mutual interests and is consistent with the purpose of the blockage. We claim for compensation shall not be affected by such blockage of access.

6. With regard to the Jungheinrich Fleet Management System the following shall additionally apply:

The customer shall be responsible for keeping up-to-date all invoicing, contact or other account data. The customer shall designate a key user ("General") in its enterprise as a central contact for the Jungheinrich Fleet Management System who is authorized to take and make statements producing legal effect in connection with the Agreement. In addition, at least one other system attendant for the Jungheinrich Fleet Management System shall be named who is able to competently stand in for the key user, i.e. the General.

If the customer asks for technical support, the customer shall ensure that for making a remote diagnosis the key user or a system attendant for the Jungheinrich Fleet Management System can be reached to answer queries and is on site.

The customer shall inform us in writing when a truck is moved from one location (consignee) to a different location (consignee).

G. Consideration, Terms of Payment, Price Adjustments

1. The amount of consideration for the services rendered by us (offer of use of the Digital Jungheinrich Product, hardware and/ or additional services) is laid down in **Device Certificate** or in **Performance Specification**. All prices are excluded value-added tax applicable from time to time as provided by law.
2. Unless otherwise agreed, considerations apply per month and net plus the applicable value-added tax and shall be payable on the first of any one month in advance.
3. After the expiry of one calendar year each, we shall be entitled to adjust the consideration to its current price list. The customer shall be informed in advance about increases in consideration and they shall apply starting from the next payment period even if the customer paid the consideration prior to the due date. In the event of increases in consideration, the customer shall be entitled to terminate the Agreement subject to one month's notice.

H. Liability for Defects

1. We shall be liable for defects in quality and defects of title in the provision of the Digital Jungheinrich Product exclusively pursuant to the following provisions.
2. Defects are material deviations from the contractually agreed range of function of the Digital Jungheinrich Product.
3. We shall be informed immediately in writing of any defect including an exact description. Defects of the Digital Jungheinrich Product and of other records in connection with the scope of services shall be remedied by us at its option by way of rectification of defects or new performance. Rectification of defects shall also include the making available of instructions for use by which the customer may reasonably be expected to avoid the defects that have become apparent in order to use the Digital Jungheinrich Product in conformity with the Agreement. The customer shall allow us adequate time and opportunity to remedy the defect and support us free of charge in the process, particularly by letting us have all the information and documents it requires for analysing and remedying the defects.
4. The customer's right of termination due to not being permitted use as provided for in section 543 (2) sentence 1 no. 1 of the German Civil Code ("BGB") shall be excluded, unless the restoration of the status of use as stipulated by contract is deemed failed.
5. In case of unforeseeable operational obstructions, e.g. mobile communication failures, network congestions, stoppage of work, sickness of skilled workers, difficulties in the procurement of spare parts, delay of delivery insufficiencies of performance by suppliers and other third parties commissioned in the course of the provision of the Digital Jungheinrich Product, official action, force majeure, industrial disputes and the occurrence of events beyond our control, the time for performance shall be appropriately extended.
6. In case we fail to comply with its obligation to remedy defects within a reasonable period or in case subsequent performance fails, the customer shall be entitled to reduce the purchase price or terminate the Agreement without notice. The right to reduce the purchase price shall be limited to the amount of the monthly consideration related to the part of defective

performance. The customer's right to remedy defects itself or by third parties (self-remedy of defects) shall be excluded.

7. If a third party asserts claims against the customer on account of the infringement of industrial property rights as a result of the use as stipulated by contract of the unchanged contractual item, the customer shall inform us immediately about the claims asserted and shall leave it to us to take all measures of defence. If the customer's claims based on the infringement of industrial property rights are justified and as a result customer's use of the contractual item is not only immaterially impaired, we shall be obliged during the period of liability for defects to enable the customer to use the contractual item by modifying it or by providing parts in replacement having the same function that do not give rise to any infringement of industrial property rights or to acquire a licence from the party whose rights were infringed.
8. To the extent that curing the industrial property rights infringement would be impossible for us or possible only at a disproportionate expense, we shall be entitled to withdraw from or terminate the Agreement. If we prior to delivery or provision of the contractual item carried out an adequate search for industrial property rights, further claims for damages by the customer against us and its vicarious agents on account of the industrial property rights infringement shall be excluded. Otherwise, claims for damages shall be adjusted pursuant to the provisions of article (I Liability) of these terms and conditions.
9. There shall be no further or other claims and rights due to defects of the contractual services than those expressly mentioned in letter H insofar as we are not subject to greater liability pursuant to mandatory legal regulations. The provision hereafter mentioned in article (I Liability) shall not be affected.

I. Liability

1. We shall be liable pursuant to the statutory provisions
 - for damage resulting from injury to life, body or health
 - in case of claims under the Product Liability Act
 - for financial loss in case of intent or lack of a condition in respect of which we have given a guarantee
 - in cases of liability imperatively prescribed by law.
2. In case of gross negligence, we shall be liable only to the extent of the typically foreseeable damage which was to be avoided by the violated duty; this restriction shall not apply insofar as the damage was caused by legal representatives or executive employees of us.
3. In case of ordinary negligence we shall be liable only in the event of breach of a material obligation endangering the purpose of the Agreement to the extent of the typically foreseeable damage which was to be avoided by the violated duty, however, always limited, overall, to the net value of the Agreement.
4. We limit its liability for loss of data to the typical recovery expenses that would have been incurred had back-up copies been made regularly and in a risk-conforming way. In addition to that we do not accept any liability, to the extent permitted by law, for loss or restoration of data. It shall be the customer's responsibility to evaluate the data transmitted by the Digital Jungheinrich Product and to check whether and when the transmission of data is fully completed. The same shall apply mutatis mutandis to decisions the customer takes in its discretion after the evaluation of the data collected.
5. The limitations of liability shall apply mutatis mutandis for the benefit of employees, authorized representatives and vicarious agents of us.
6. Further claims for damages by the customer shall be excluded, to the extent permitted by law.
7. In case of theft of or damage to the hardware components we may make available to the customer, the customer shall be liable.

J. Data Protection

1. The contracting parties hereby agree to strictly comply with all applicable regulations concerning the protection of personal data (in particular the European GDPR), to treat any personal data strictly confidential and not to process personal data for any purpose other than the purpose of this Agreement.
2. We generally do not disclose personal data towards third parties, unless a transmission of the data is necessary for the execution of the Agreement or we are legally obliged or entitled to do so. To the extent we commission subcontractors with the execution of the Agreement, we hereby strictly comply the applicable personal data protection regulations, in particular the European GDPR.
3. We undertake suitable technical and organisational measures in order to ensure the confidentiality, availability and integrity of personal data obtained from the customer. In particular, we ensure that every employee concerned with the execution of the Agreement is bound by the obligation of data protection and confidentiality.
4. In case the relevant Digital Jungheinrich Product is equipped with our so called Telematics Box, this allows the exchange of technical data recorded during the operation of the relevant vehicle ("Telematics Data"). As per default no personal data will be processed or transmitted by this means. Additional Services/ Products may do otherwise, however, the provision of such Services will in any case be subject to a dedicated additional agreement. In case the customer itself combines Telematics Data with information in a way that personal data can be derived (e.g. about the operator of a vehicle) the customer is solely responsible for the compliance

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with personal data protection regulations applicable as a consequence of such combination.

5. In case we are "commissioned data processor" within the meaning of personal data protection regulations, we will enter into a separate Agreement on commissioned data processing, the conclusion of which is a precondition for the provision of the relevant Digital Jungheinrich Product.
6. Additional information concerning personal data protection at Jungheinrich can be found on our homepage under: <https://www.jungheinrich.de/datenschutzerklaerung>

K. Confidentiality

1. The contracting parties agree to treat confidentially and not to disclose to third parties all the information received by the other contracting party prior to or during the performance of this Agreement subject to the rights provided for herein unless (i) it is publicly known without any infringement of the secrecy obligation, (ii) it must be disclosed on account of legal obligations or by order of a court or public authority, or (iii) the provision of the Digital Jungheinrich Product contains or requires performances or contributions of third parties, in which case we are entitled to disclose such information to the relevant third party, which are necessary for such performance or contribution. The contracting parties shall keep such information in safe custody so that access to it by third parties is excluded.
2. The secrecy obligation shall survive the end of this Agreement for another three years.

L. Terms of the Agreement and Termination

1. The contractual relationship shall come into force upon signing.
2. We shall make the Digital Jungheinrich Product available to the customer in working order on the contractually agreed date (hereinafter "**Supply Date**"). The access data to the Digital Jungheinrich Product will be transmitted to the customer as of the Supply Date.
3. The term of the Agreement is defined in the relevant contractual document. In case the term of the agreement is not defined the Agreement shall remain effective for an indefinite period of time and may be terminated effective at the end of a contractual year (counted from the "**Supply Date**") subject to three months' notice.
4. The contracting parties' right of termination without notice for an important reason shall not be affected. An important reason shall in particular be deemed to exist if
 - one of the contracting parties violates the obligations expressly provided for in this Agreement and fails to discontinue the violation immediately despite a reminder by the other side;
 - the continued use of the Digital Jungheinrich Product – in its original or in its modified state – would conflict with statutory regulations;
 - the customer is in arrears with paying the consideration or a major part thereof for two consecutive payment dates.
5. To be effective, the notice of termination must be in writing pursuant to section 126 of the BGB (German Civil Code).

M. Miscellaneous Provisions

1. We will provide the customer with product information by email and/or newsletter, provided that the contact person authorized by the customer has expressly agreed to the transmission of such information.
2. The customer's right of set-off against claims by us shall be limited to counterclaims that (i) arise in the course of the business relationship established by this Agreement, or (ii) are undisputed or have been recognized by declaratory judgment.
3. All amendments or additional agreements to this Agreement shall be in writing. This shall also apply to the modification of this requirement of written form.
4. Should any provision of this Agreement be or become invalid, the validity of the other provisions shall not be affected. The contracting parties shall replace such an invalid provision by a valid provision coming as close as possible to the purpose of the Agreement intended by the parties. This shall apply mutatis mutandis to any gaps in this Agreement.
5. All legal relations between us and the customer shall be governed by German law to the exclusion of the UN Sales Convention. The venue for all disputes arising out of or in connection with this Agreement shall be Hamburg, to the extent permitted by law. We shall also be entitled to sue at any other legally provided venue. In the case of disputes within the jurisdiction of the local courts, the Hamburg-Mitte Local Court shall have jurisdiction.