



Agreement on Contract Data Processing

The following Agreement is being concluded between:

Aug. Winkhaus GmbH & Co. KG

August Winkhaus Straße 31

48291 Telgte

- hereafter referred to as the Client -

Name

Street Name

Place Name

- hereafter referred to as the Contractor -

In addition to the agreements made in the contract for the provision of services dated , the following regulations apply with regard to data protection and data security.

General

(1) The Contractor processes personal data on behalf of the Client. According to the intentions of the Parties, and in particular the Client, this Agreement contains the written order on contract data processing within the meaning of Art. 28 (EU) 2016/679 General Data Protection Regulation (GDPR) and regulates the rights and obligations of the Parties with regards to data processing.

(2) If the terms "data processing" or "processing" (of data) are used in this Agreement, the definition of these terms is to be taken from Art. 4 No. 2 GDPR.

Object of the Order

The Client's order for the Contractor includes the following works and/or services:

- A more detailed description of the deliverables here -

The following data types are regularly the subject of processing:

- The types of data should be specified as precisely and completely as possible; generalisations (usage data, inventory data, etc.) are allowed -

The people affected by the data processing are:

- E.g. customers, the Client, third parties etc. -

Rights and Obligations of the Client

(1) The Client is a Controller within the meaning of Art. 4 No. 7 GDPR for the Contractor processing the data as ordered. The Contractor shall have the right to inform the Client if any data processing is not legally permissible in their opinion. If the Contractor can demonstrate that processing in accordance with the instructions of the Client could lead to a liability of the Contractor in accordance with Art. 82 GDPR, the Contractor has the right to stop processing until the liability between the Parties has been clarified.

(2) As a Controller, the Client is responsible for safeguarding the rights of Person(s) Concerned. The Contractor shall inform the Client immediately if Person(s) Concerned assert their rights vis-à-vis the Contractor.

(3) Before the start of data processing and then regularly afterwards, the Client must satisfy themselves that the Contractor is complying with the technical and organisational measures for data security. The Client will document the result in an appropriate manner.

(4) The Client has the right to give the Contractor additional instructions on the nature, scope and methods of data processing at any time. Instructions can be given:

- In writing
- By fax
- By e-mail
- or orally.

So long as oral instructions are permitted as instructions in this Agreement, they must be immediately confirmed in text form (e.g. fax, e-mail) to the Contractor.

(5) Any provisions with respect to payment for additional expenses incurred by the Contractor as a result of the additional instructions by the Client remain unaffected.

(6) The Client must inform the Contractor immediately if errors or irregularities in conjunction with the processing of personal data by the Contractor are determined.

(7) In the event that an obligation to provide information to third parties pursuant to § 15a Broadcast Media Act, § 109a Telecommunications Act or Art. 33, 34 GDPR exists, the Client is responsible for compliance with this obligation.

General Obligations of the Contractor

(1) The Contractor shall process personal data exclusively in accordance with the agreements made and/or in accordance with the supplementary instructions issued by the Client if necessary. Excluded are legal regulations which oblige the Contractor to carry out other processing. In such a case, the Contractor shall notify the Client of these legal requirements prior to processing, provided that the law concerned doesn't prohibit such a notification due to an important public interest. The purpose, nature and scope of the data processing are otherwise exclusively in accordance with this Agreement and/or the instructions given by the Client. The Contractor is prohibited from carrying out any processing which deviates from this, unless the Client has agreed to this in writing. The Contractor undertakes to only conduct the contract data processing in Member States of the European Union (EU) or the European Economic Area (EEA).

(2) Any unneeded documents with personal data or files shall be destroyed in accordance with data protection requirements after prior consent of the Client.

(3) The Contractor shall confirm that they have named a company Data Protection Officer within the meaning of Art. 37 GDPR. The obligation to confirm the appointment of a Data Protection Officer can be waived at the discretion of the Client if the Contractor can demonstrate that they are not legally obliged to appoint a Data Protection Officer and the Contractor can demonstrate that there are operational arrangements that ensure the processing of personal data in compliance with the statutory provisions, the provisions of this Agreement and any other instructions given by the Client.

(4) When it comes to processing personal data as ordered, the Contractor guarantees the contractual execution of all agreed measures.

(5) The Contractor is obliged to organise their company and business operations so as to ensure that the data that is processed on behalf of the Client is secured to the extent needed and is protected from unauthorised access by third parties. In the event of changes in the organisation of the contract data processing which are important for the security of the data, the Contractor will agree these with the Client in advance

(6) The Contractor shall inform the Client immediately if, in their opinion, an instruction issued by the Client goes against legal regulations. The Contractor is authorised to stop the implementation of the respective instruction until it is confirmed or amended by the Client.

(7) The Contractor is obliged to immediately inform the Client of any infringement of data protection provisions or of the contractual agreements made and/or the instructions issued by the Client which have occurred in the course of the processing of data by the Contractor or other persons conducting the processing. In addition, the Contractor shall inform the Client immediately if a supervisory authority in accordance with Art. 58 GDPR becomes active vis-à-vis the Contractor and if this can involve a check of the processing which the Contractor conducts on behalf of the Client.

(8) In the event that the Contractor determines, or has reason to assume that:

- Special kinds of personal data (§ 3, para. 9 Federal Data Protection Law / Art. 9 GDPR) or
- Personal data which is subject to an obligation of professional secrecy or

- Personal data which relates to punishable offences or irregularities or suspected punishable offences or irregularities or (also within the meaning of Art. 10 GDPR)
- Personal data regarding bank or credit card accounts

processed by the Contractor for the Client is unlawfully transmitted or in other ways unlawfully disclosed to third parties, the Contractor shall inform the Client immediately and completely of the time, nature and scope of the incident/incidents in written form or text form (fax/e-mail). Such notification must describe the nature of the illegal disclosure of knowledge. Such notification should also describe possible adverse consequences of the illegal disclosure of knowledge. The Contractor is also obliged to immediately indicate what measures have been taken by the Contractor which prevent the illegal transfer to and/or unauthorised access by third parties in the future.

The Contractor is aware that a notification obligation in accordance with Art. 33 GDPR can exist for the Client which stipulates that they must notify the supervisory authority within 72 hours. The Contractor shall support the Client in the corresponding notification obligations.

(9) Processing data as ordered by the Client outside of the Contractor's or Subcontractor's operational premises is only permissible with the consent of the Client in written form or text form. Processing the Client's data in private homes is only permitted in individual cases with the consent of the Client in written form or text form.

(10) The Contractor will identify in an appropriate way the data processed on order for the Client. If the data is processed for different purposes, the Contractor shall mark the data with the respective purpose.

(11) When the Client creates the records of procedure or records of processing activities, the Contractor has to co-operate. They must give the Client the required information in an appropriate manner.

(12) The Contractor supports the Client taking into account the nature of the processing and the information available to them when complying with the aforementioned obligations in Art. 32-35 GDPR.

Supervisory Powers

(1) The Client has the right to check at any time and to the necessary extent that the Contractor is complying with the statutory provisions on data protection and/or with the contractual arrangements between the Parties and/or with the instructions given by the Client.

(2) The Contractor is obliged to exchange information with the Client if this is necessary for the implementation of the check within the meaning of paragraph 1.

(3) The Client may request access to the data processed by the Contractor for the Client as well as to the data processing systems and programmes.

(4) The Client may, after prior notification with a reasonable notice period, conduct the check within the meaning of paragraph 1 at the Contractor's operational facility during normal business hours. The Client must ensure that the checks are only carried out to the extent

necessary and in such a way that the Contractor's business operations are not disturbed disproportionately.

(5) In the event of measures by the supervisory authority towards the Client within the meaning of Art. 58 GDPR, in particular with regard to information and checking obligations, the Contractor is obliged to provide the necessary information to the Client and allow the respective competent supervisory authority to conduct an on-the-spot check. The Client must be informed of appropriate actions planned by the Contractor.

Subcontract Relationships

(1) The commissioning of Subcontractors by the Contractor is permitted only with the written consent of the Client. The Contractor will specify all subcontract relationships already in existence at the conclusion of the Agreement in "**Appendix 1**" to this Agreement.

(2) The Contractor has to carefully select the Subcontractor and check, prior to commissioning, that they are able to comply with the agreements made between the Client and the Contractor. Before and regularly during the Agreement, the Contractor has to check that the Subcontractor has taken the necessary technical and organisational measures to protect personal data in accordance with Art. 32 GDPR. The result of the check is to be documented by the Contractor and to be transferred to the Client if requested. The Contractor is obliged to have the Subcontractor confirm that they have appointed a company Data Protection Officer within the meaning of Art. 37 GDPR. In the event that the Subcontractor has not appointed a Data Protection Officer, the Contractor has to inform the Client.

(3) The Contractor has to ensure that the rules agreed upon in this Agreement and, if necessary, additional instructions by the Client also apply vis-à-vis the Subcontractors. The Contractor has to regularly check for compliance with these obligations.

(4) The Contractor has to conclude a contract data processing agreement with the Subcontractor which corresponds to the requirements of Art. 28 GDPR. In addition, the Contractor must oblige the Subcontractor to abide by the same data protection obligations that exist between the Client and the Contractor. A copy of the contract data processing agreement must be given to the Client if requested.

(5) The Contractor is in particular obliged to ensure, by contractual arrangements, that the Client's supervisory powers (para 5 of this Agreement) and those of supervisory authorities also apply vis-à-vis the Subcontractor and corresponding supervisory rights of the Client and the supervisory authorities are agreed. It must also be contractually regulated that the Subcontractor has to acquiesce to such supervisory measures and any on-the-spot checks.

(6) Not considered subcontract relationships within the meaning of paragraphs 1 to 5 are such services which the Contractor claims from third parties as pure ancillary services for conducting their business activity. These include, for example, cleaning services, pure telecommunications services without specific reference to services which the Contractor provides for the Client, postal and courier services, transport services and security services. The Contractor is nevertheless required, even for ancillary services which are provided by third parties, to ensure that adequate arrangements and technical and organisational measures have been taken to ensure the protection of personal data. Maintenance and

inspection services constitute subcontractor relationships requiring consent if the maintenance and inspection involves IT systems used as part of the provision of services for the Client. The Parties agree that the above maintenance and inspection services constitute "Processing" within the meaning of Art. 28 GDPR.

Privacy / Confidentiality Obligation

(1) When processing data for the Client, the Contractor must safeguard the confidentiality of data which they receive or obtain knowledge of as part of the order. The Contractor undertakes to observe the same trade secret rules as the Client. The Client is obliged to inform the Contractor of any special trade secret rules.

(2) The Contractor ensures that they are aware of the applicable data protection legislation and are familiar with the application of this. In addition, the Contractor ensures that the employees involved with the implementation of the work are familiar with the relevant provisions of data protection. If, as part of services for the Client, the Contractor assists in the provision of business-related telecommunications services, they are obliged to commit the employees involved in writing to secrecy of telecommunication within the meaning of § 88 Telecommunications Act.

(3) The Contractor will oblige in writing all employees that provide services as part of the Client's order to treat all of the Client's data, in particular the personal data processed for the Client confidentially. If the Client so requests, this obligation for employees must be proven.

Protection of the Rights of Person(s) Concerned

(1) The Client is solely responsible for safeguarding the rights of the Person(s) Concerned.

(2) If the Contractor's co-operation is required for the Client to protect the rights of Person(s) Concerned, in particular regarding information, correction, blocking or deletion, the Contractor shall take the necessary measures in accordance with the instructions of the Client. The Contractor shall support the Client with appropriate technical and organisational measures to help fulfil their duty to reply to requests for exercising rights of Person(s) Concerned.

(3) Any provisions with respect to payment for additional expenses incurred by the Contractor as a result of the co-operation duties in conjunction with asserting rights of Person(s) Concerned against the Client remain unaffected.

Confidentiality Obligations

(1) Both Parties agree to perpetually treat as confidential all information they receive as part of the implementation of the provisions of this Agreement and to only use such information for the implementation of the Agreement. No Party is entitled to use this information, in whole or in part, for any purpose other than the purposes stated above, or to allow third parties to access this information.

(2) The above obligation shall not apply to information which one of the Parties can prove they have received from a third party without being bound to secrecy, or which is publicly known.

Technical and Organisational Measures for Data Security

(1) The Contractor undertakes to the Client to comply with the technical and organisational measures which are necessary to ensure compliance with the applicable data protection provisions.

(2) The state of the technical and organisational measures at the conclusion of the Agreement is attached as "**Appendix 2**" to this Agreement. The Parties agree that changes in the technical and organisational measures may be required to adjust to technical and legal conditions. In the event of there being significant changes which could affect the integrity, confidentiality or availability of the personal data, the Contractor shall agree these with the Client in advance. Measures which only bring minor technical or organisational changes and do not negatively affect the integrity, confidentiality and availability of personal data can be implemented by the Contractor without consultation with the Client. The Client may, at any time, request a summary of the current technical and organisational measures taken by the Contractor.

(3) The Contractor will check the technical and organisational measures taken for their effectiveness. The checks must be done regularly and for specific events. In the event that optimisations and/or changes are needed, the Contractor shall inform the Client.

(4) The Contractor will document the technical and organisational measures in accordance with Art. 32 GDPR to guarantee the level of protection in accordance with Art. 32 GDPR and this Agreement. The Contractor will make this documentation available to the Client in a suitable form. Unless the Parties have agreed separately that the technical and organisational measures listed in "**Appendix 2**" are to be replaced by the newly available documentation of the technical and organisational measures for data security pursuant to this paragraph, the measures referred to in "Appendix 2" remain part of the Agreement and are to be fulfilled by the Contractor.

Duration of the Order

(1) The Agreement begins on _____ and is concluded for an indefinite period of time.

(2) It can be terminated with a deadline of three months to the end of the quarter.

(3) The Client may terminate the Agreement at any time and without prior notice if: the Contractor makes a serious breach of the applicable data protection regulations or of obligations under this Agreement, the Contractor cannot or does not want to carry out

instructions of the Client or the Contractor refuses the Client or the competent supervisory authority access in breach of contract.

Termination

(1) After the termination of the Agreement, the Contractor must, according to the Client's instructions, delete or return to the Client all documents, data and processing or utilisation results created which come about as a result of the Agreement. The deletion must be documented in a suitable form. Any legal retention requirements or other obligations for the storage of data remain unaffected.

(2) The Client has the right to check the complete and contractual return and deletion of data by the Contractor. This can be in the form of a visual inspection of the data processing equipment at the Contractor's operational facility. The on-the-spot check should be announced by the Client with a reasonable notice period.

Right of Retention

The Parties agree that a plea of the right of retention by the Contractor within the meaning of § 273 German Civil Code (BGB) regarding the data processed and the associated data carriers is not possible.

Final Provisions

(1) If the Client's property at the Contractor should become endangered through actions of third parties (for example by seizure or confiscation), by insolvency proceedings or by other events, the Contractor must immediately inform the Client. The Contractor will immediately inform the creditors that the property relates to data that is being processed on contract.

(2) Ancillary agreements must be in writing.

Should individual provisions of this Agreement be ineffective, then this shall not affect the effectiveness of the remaining provisions of this Agreement.

_____	_____	_____	_____
Place	Date	Place	Date
_____		_____	
- Client-		- Contractor-	

Appendix 1
Subcontractors

For the processing of data on behalf of the Client, the *Contractor* hires third parties to process data on their behalf ("Subcontractors").

This involves the following company/companies:

- All the companies including their name, legal form, contact information and a valid address must be specified by the Contractor here -

Appendix 2**The Contractor's Technical and Organisational Measures****Notice:**

Please indicate below the technical and organisational measures taken.

In the case of individual measures, a keyword description or even just a single word (for example, "Alarm") is sufficient. In the case of other measures, there should be a short description which enables an assessment by the Client (example: In the event of video surveillance as a measure of access control, it would be necessary to describe if, for example, only the entrance door or also other parts of the building are monitored and whether footage is recorded). In the case of a measure such as "password assignment" it must be specifically stated whether there is a minimum length of password and a certain complexity of password and what the length and complexity of the password are. Furthermore, it should also be indicated whether or not the minimum password length and complexity are enforced technically.

1. Access Control

Measures designed to prevent unauthorised access to data processing equipment with which personal data is processed or used.

2. Access Control

Measures designed to prevent unauthorised use of data processing systems.

3. Access Control

Measures to ensure that those authorised to access a data processing system can only access data subject to their access authorisation and to ensure that personal data cannot be read, copied, modified or removed unauthorised during processing, use and after storage.

4. Forwarding Control

Measures to ensure that personal data cannot be read, copied, modified, or removed unauthorised when it is being transferred electronically or transported or when it is being saved on data storage and to ensure that it is possible to check and determine at which point a transfer of personal data by data transfer equipment is intended.

5. Input Control

Measures to ensure that it is possible to retrospectively check and determine whether and by whom personal data has been entered into, modified or removed from data processing systems.

6. Order Control

Measures to ensure that personal data which is being processed on order can only be processed in accordance with the instructions of the Client.

7. Availability Control

Measures to ensure that personal data is protected against accidental destruction or loss.

8. Separation Rule

Measures to ensure that data collected for different purposes can be processed separately.