

## Processing agreement (Privacy agreement)

Concluded by and between

**Kögel Trailer GmbH**  
**Am Kögel-Werk 1**  
**89349 Burtenbach, Germany**

– hereinafter referred to as ‘the Controller’ –

and

**Company**  
**Street and building number**  
**Postcode and town/city**

– hereinafter referred to as ‘the Contractor’ –

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## **1. Preamble**

- 1.1. The Controller tasks the Contractor with processing personal data in compliance with the following regulations.
- 1.2. In the context of the provision of services under the main agreement, it is necessary for the Contractor to handle the Controller's personal data. This agreement specifies the Parties' rights and obligations under data protection law in connection with the Contractor's handling of the Controller's data for the performance of the main agreement.

## **2. Subject matter of the contract and specification of the content of the contract**

- 2.1. The main contract is the contract / service agreement for the telematics system incorporated in the vehicle used by the customer, to which reference is made here.
- 2.2. The contract covers only the service described in Annex 1 (= subject matter of the contract activity). The nature and purpose of the intended personal data processing, as well as the type of data and the categories of data subjects, are set out in Annex 1 to this agreement.
- 2.3. The contractually agreed service is provided exclusively in a member state of the European Union or in a state that is party to the Agreement on the European Economic Area. Any – even partial – relocation of the service or performance of the contract outside the European Union or the European Economic Area also requires the Controller's prior consent and may only take place if the specific legal requirements set out in Art. 44 et seq. of the GDPR are met.
- 2.4. Completion of the contract by the Contractor in private residences shall only be carried out with the Controller's prior written consent following submission of a security policy. Access to the employee's home for the employer's monitoring purposes is to be contractually ensured beforehand in principle; this also applies to the measures under Art. 32 of the GDPR.

## **3. The Controller's obligations**

- 3.1. The Controller is responsible for assessing the admissibility of processing under data protection law according to Art. 6 (1) of the GDPR, complying with statutory data protection provisions and safeguarding the rights of data subjects according to Art. 12 to 22 of the GDPR. The Contractor is obligated to forward all requests to the Controller immediately, provided that they are recognisably and exclusively addressed to the Controller.
- 3.2. The Controller shall issue all instructions in writing or in text form. The Controller has the right to issue the Contractor with instructions concerning the nature, scope and methods of data processing or changes to the same.
- 3.3. The Controller shall inform the Contractor immediately if it discovers errors or irregularities when examining the results of the contract.
- 3.4. The Controller is obligated to provide the Contractor in good time with the information, data, documents and data stock required for performance of the service in the form agreed in detail.

- 3.5. The Controller is obligated to treat all knowledge of the Contractor's company and trade secrets and data security measures obtained in the context of the contractual relationship as confidential. This obligation shall remain in force even after termination of the agreement.

#### **4. The Contractor's obligations**

- 4.1. The Contractor confirms that it is aware of the relevant data protection regulations. It shall organise the internal organisation within its area of responsibility such that it meets the special data protection requirements and shall monitor compliance with the data protection regulations in its company.
- 4.2. The Contractor is jointly responsible for assessing the admissibility of processing under data protection law, for complying with legal provisions in the context of its legal responsibility for data protection and for helping to safeguard the rights of data subjects.
- 4.3. Insofar as is required by law, the Contractor shall appoint a data protection officer and, if necessary, a representative under Art. 27 of the GDPR. A person who meets the legally prescribed requirements shall be appointed data protection officer. The data protection officer's contact details are provided to the Controller for the purpose of direct contact.
- 4.4. The Contractor shall process personal data exclusively in the context of the agreements made and according to the Controller's instructions, unless it is obligated to process the data in another way by the law of the European Union or the member states that the Contractor is subject to (e.g. investigations by law enforcement or state protection authorities); in a case such as this, the Contractor shall notify the Controller of these legal requirements prior to processing, unless the law in question prohibits such notification for reasons of important public interest (Art. 28 (3), sentence 2, (a) of the GDPR). The Contractor shall document all of the Controller's instructions in a form that eliminates the possibility of subsequent changes.

#### **5. Technical and organisational measures**

- 5.1. The Contractor assures the Controller that it has taken and complies with the technical and organisational measures concerning compliance with data protection that are required for the commissioned activity. In particular, assurance is given that the Contractor ensures a level of protection appropriate to the risk to the rights and freedoms of the natural data subjects by the processing for the specific commissioned processing. To this end, the protection objectives set out in Art. 32 (1) of the GDPR, such as confidentiality, integrity and availability of the systems and services, as well as their resilience in relation to the nature, scope, circumstances and purpose of processing, are taken into account such that the risk is permanently contained by appropriate technical and organisational remedies.

- 5.2. The technical and organisational measures according to Art. 32 of the GDPR that are relevant to the Contractor with regard to the commissioned activity are listed in detail in Annex 3 to this agreement, in line with the identified risk, taking into account the protection objectives according to the state of the art and with particular regard to the IT systems and processing procedures used.
- 5.3. The Contractor shall ensure that the access rights granted to the Controller's systems cannot be used by unauthorised individuals and that the Controller's data cannot be viewed by unauthorised individuals.
- 5.4. The Contractor undertakes to ensure sufficient data backup, insofar as the Controller's data is stored on the Contractor's premises. In particular, the Contractor warrants that sufficient precautions have been taken against data loss, unavailability and the spread of malware.
- 5.5. The following risk assessment methodology, which takes into account the likelihood and severity of risks to rights and freedoms, is used for contractual personal data processing: First, the level of protection of the personal data being processed is identified (normal, high, very high). The technical and organisational measures are then selected, taking into account the risk posed by data processing to the rights and freedoms of data subjects. The risk is determined by the severity of the potential physical, material or immaterial damage to the data subject (negligible, limited, substantial, maximum) and the probability of such damage occurring (negligible, limited, substantial, maximum).
- 5.6. The measures taken by the Contractor may be adapted to technical and organisational further developments in the course of the contractual relationship, but may not fall below the agreed standards. Major changes must be agreed by the Contractor in documented form. Such coordination is to be retained for the duration of this agreement.
- 5.7. Insofar as the Contractor carries out maintenance work on IT systems for the Controller, the following arrangements shall also apply:
  - 5.7.1. The Contractor may only access the Controller's personal data in the context of maintenance insofar as doing so is necessary for carrying out the same. During maintenance work, the Contractor is prohibited from storing the Controller's personal data on its own systems or data carriers, unless the Controller instructs it to do so.
  - 5.7.2. The Contractor shall notify the Controller in advance of any remote maintenance work. The Controller is entitled to follow the performance of the remote maintenance work. On request and to the extent necessary, the Contractor shall assist in the configuration of technical monitoring equipment.
  - 5.7.3. Remote maintenance is only permitted from the Contractor's business premises. Data transfers for the purpose of remote maintenance must take place in state-of-the-art encrypted form. The Contractor shall use sufficiently secure, state-of-the-art authentication procedures.

**6. Data secrecy / data confidentiality**

- 6.1. The Contractor is obligated to treat all knowledge of the Controller's company and trade secrets and data security measures obtained in the context of the contractual relationship as confidential. This obligation shall remain in force even after termination of this agreement.
- 6.2. The Contractor warrants that it will familiarise the staff employed in the performance of the work with the data protection provisions applicable to them before they commence their activities and that they have undertaken in writing to maintain secrecy and confidentiality – even after termination of their employment relationship. It monitors compliance with data protection regulations. The confidentiality obligations shall continue to apply after termination of this agreement. Furthermore, the Contractor warrants that it will inform its employees of the consequences of divulging private, company and trade secrets.
- 6.3. The Contractor shall not use the personal data, documents and data stock provided or made available for automated data processing for any other purposes, particularly for its own purposes. Data carriers originating from or used for the Controller are specially marked. Input and output, as well as current use, are documented. Furthermore, the Contractor shall strictly separate the Controller's data from other data stock.
- 6.4. Copies or duplicates of personal data (in whatever form) will not be made without the Controller's knowledge and permission. The creation of backups remains unaffected if the creation of the same is necessary to properly process the data or to meet legal retention requirements.

**7. Assisting the Controller**

- 7.1. The Contractor may only provide information to third parties or to data subjects with the Controller's prior written consent or based on an existing agreement with the Controller. The same applies to releasing documents or data records.
- 7.2. The Contractor must respond to requests from the Controller immediately so that the statutory deadlines for information and disclosure obligations on the part of the Controller can be met.
- 7.3. Insofar as a data subject asserts its rights under the GDPR, particularly under Chapter III or other provisions under data protection law directly against the Contractor, the Contractor shall immediately forward this request to the Controller and assist the Controller in processing these rights if necessary. It shall refrain from providing information under its own responsibility unless the Controller has previously requested that it do so.
- 7.4. The Contractor shall rectify, erase or restrict the processing of personal data resulting from the contractual relationship immediately if the Controller requests the same by means of an instruction and the Contractor's legitimate interests do not conflict with this.
- 7.5. The Contractor shall appoint a contact person to assist the Controller in fulfilling statutory information and disclosure obligations arising in connection with the processing on the Controller's behalf and shall inform the Controller of the contact details of such contact person without undue delay.

- 7.6. The Contractor shall assist the Controller with a pending data protection impact assessment, as well as with maintaining the records of processing activities to the extent necessary, insofar as this concerns the Controller's personal data. It shall make the information required for this purpose available to the Controller immediately.
- 7.7. The Contractor shall, on request, cooperate in establishing and updating the Controller's records of processing activities. It shall disclose the required information and documents to the Controller on request.
- 7.8. The Contractor shall itself keep records of all categories of processing activities carried out on the Controller's behalf and, in doing so, shall comply with the requirements set out in Art. 30 (2) of the GDPR.

## **8. Other contractors**

- 8.1. The Contractor is only permitted to task other contractors with processing the Controller's data with the Controller's approval under Art. 28 (2) of the GDPR, which must be given in text form.
- 8.2. Consent can only be granted if the Contractor informs the Controller of the other contractor's name and address, as well as their intended activity. Additionally, the Contractor must ensure that it carefully selects the other contractor, taking into account the suitability of the technical and organisational measures taken by the latter under Art. 32 of the GDPR. The documentation for this shall be made available to the Controller on request.
- 8.3. The Contractor may only commission other contractors in third countries if the special requirements set out in Art. 44 et seq. of the GDPR are met (e.g. Commission adequacy decision, standard data protection clauses, approved codes of conduct).
- 8.4. The Contractor shall contractually ensure that the agreed regulations between the Controller and the Contractor also apply to the latter's other contractors. The agreement concluded with the other contractor shall be sufficiently specific to clearly set apart the responsibilities of the Contractor and those of its other contractors. If several other contractors are used, this also applies to the responsibilities between them. In particular, the Controller must be entitled to carry out appropriate checks and inspections, including on-site checks and inspections, on other contractors' premises if necessary, or to have such checks and inspections carried out by third parties commissioned by it.
- 8.5. The agreement concluded with the other contractor must be in writing, which may also be in an electronic format (Art. 28 (4) and (9) of the GDPR).
- 8.6. Forwarding of data to the other contractor is only permissible once the latter has met the requirements according to Art. 29 and Art. 32 (4) of the GDPR with regard to its employees and the Contractor regularly checks the other contractor's compliance with these obligations.
- 8.7. The Contractor shall be liable vis-à-vis the Controller for ensuring that the other contractor complies with the data protection obligations contractually imposed on it by the Contractor according to this section of the agreement.

- 8.8. The Contractor shall always inform the Controller of any intended change regarding the involvement of new or the replacement of existing downstream contractors, giving the Controller the opportunity to object to such changes (Art. 28 (2), sentence 2 of the GDPR).
- 8.9. Such services that the Contractor acquires from third parties as an ancillary service to assist with execution of the contract are not to be understood as other contractors in the sense of this regulation. This usually includes telecommunications services or cleaning staff, for example. However, the Contractor is obligated to make appropriate and legally compliant contractual agreements and to implement monitoring measures to ensure the protection and security of the Controller's data, also in the case of outsourced ancillary services.
- 8.10. The other contractors that the Contractor already uses are listed in Annex 2 to this agreement. The Controller agrees to the use of these other contractors.
- 8.11. The Contractor shall verify the respective other contractor's compliance with the obligations. The result of the inspection shall be documented and made available to the Controller on request.

## **9. Supervisory authorities and violations of data protection requirements**

- 9.1. The Contractor is obligated to notify the Controller immediately of inspections or investigations by supervisory authorities or by auditors / inspectors, insofar as this concerns the Client's personal data.
- 9.2. The Contractor shall inform the Controller immediately in the event of disruptions to operations, in the event of the occurrence of or suspicion of a breach of data protection regulations or the stipulations made in this agreement, as well as in the event of other errors or irregularities in the context of the contract work for the Controller. The same shall apply if the Contractor establishes that the technical and organisational measures it takes do not meet the statutory requirements.
- 9.3. The Contractor's corresponding notification shall take into account the requirements set out in Art. 33 (3) of the GDPR; the Contractor shall also undertake to provide the Controller with appropriate support, if necessary, in its obligations under Art. 33 or 34 of the GDPR
- 9.4. Notifications according to Art. 33 or 34 of the GDPR for the Controller may only be carried out by the Contractor following prior written instruction. The Contractor shall immediately draw the Controller's attention to the fact that it believes an instruction issued by the Controller violates statutory provisions (Art. 28 (3), sentence 3 of the GDPR). The Contractor is entitled to suspend implementation of the corresponding instruction until it is confirmed or changed by the Controller following examination.
- 9.5. If consultations are held with the supervisory authority, the Controller shall be assisted by the Contractor.

**10. Erasing and returning data**

- 10.1. Rectification, erasure or blocking of data will only be carried out according to the Controller's written instructions.
- 10.2. Test and scrap material shall be destroyed by the Contractor immediately in compliance with at least security level P-4 set out in DIN 66399 (with regard to any written documents) or at least in compliance with security level H-4 or T-4 set out in DIN 66399 (with regard to magnetic data carriers). The Contractor shall confirm that the data has been destroyed by sending suitable proof on the Controller's request.
- 10.3. Insofar as the Controller's data (records) was/were stored on the Contractor's systems, following completion of the respective contract activities this/these data (records) is/are to be handed over to the Controller in a migratable form or erased immediately according to the Controller's instructions. The erasure of the data (records) must be carried out such that the possibility of reconstructing the data records can be excluded or reconstruction is only possible with a disproportionately high effort. The Contractor shall provide the log file on the erasure process on the Controller's request. The Controller confirms data return in a format suitable for migration in text form.
- 10.4. Once the respective contract work has been completed, the Contractor shall hand over to the Controller all documents and data records that have come into its possession and that are directly connected to the contractual relationship or shall erase them according to the instructions and, in the event of erasure, shall confirm this in writing, stating the erasure date.
- 10.5. The Contractor is prohibited from storing personal data processed in the context of the contract work for longer than has been agreed in writing with the Controller.
- 10.6. If documents prepared by the Contractor for the purpose of documenting the contract activities are subject to statutory retention obligations, they shall be blocked by the Contractor according to data protection law until the required period has elapsed.

**11. Monitoring obligations**

- 11.1. The Contractor agrees that the Controller or a third party commissioned by the Controller shall be entitled, during normal operating and business hours and without disrupting operations, to monitor compliance with the regulations on data protection and data security or the contractual agreements, as well as the adequacy of the warranted technical and organisational measures on the Contractor's business premises, particularly by obtaining information and inspecting the stored data and the data processing programs, as well as by on-site checks and inspections (Art. 28 (3), sentence 2, (h) of the GDPR).
- 11.2. The Contractor warrants that it will assist with these checks where necessary.
- 11.3. The Contractor undertakes to provide, on written request and within a reasonable period of time, all information, evidence and inspections required for the performance of a contract review in which the effectiveness of technical and organisational measures is reviewed.



## 12. Start and end of the agreement / contractual penalty

12.1. The term of this agreement is based on the term of the main agreement.

12.2. The Controller may terminate the contractual relationship at any time without notice if the Contractor seriously violates the provisions set out in this agreement or legal provisions, if the Contractor cannot or will not carry out an instruction issued by the Controller or if the Contractor refuses the Controller's monitoring rights in violation of the agreement. In particular, failure to comply with the obligations set out in this agreement and derived from Art. 28 of the GDPR constitutes a serious breach.

12.3. A contractual penalty amounting to €10,000 is agreed should the Contractor breach the regulations set out in this agreement, particularly with regard to compliance with data protection.

## 13. Final provisions

13.1. If one Party is subject to special secrecy rules that are not mentioned above and informs the other of this in writing at the beginning of the agreement, this Party is also obligated to observe the secrecy rules.

13.2. Should the Controller's ownership on the Contractor's premises be jeopardised by third-party measures (e.g. seizure or confiscation), by insolvency proceedings or by other events, the Contractor shall immediately notify the Controller to this effect. A right of retention with regard to the Controller's data carriers and data stock is excluded.

13.3. Any objection to the right of retention under Section 273 of the German Civil Code is excluded with regard to the data processed for the Controller and the associated data carriers.

13.4. Should individual parts of the agreement be invalid, this shall not affect the validity of the rest of the agreement.

13.5. Amendments or modifications to this agreement must be made in writing.

### Supplementary provisions to this agreement

- **Annex 1:** List of services contracted (nature and purpose of processing, type of data and categories of data subjects)
- **Annex 2:** List of other contractors used, including processing sites
- **Annex 3:** Description of the technical and organisational measures taken on the Contractor's premises according to Art. 32 of the GDPR to protect the Controller's data in the context of the agreed activity (or activities)

Burtenbach \_\_\_\_\_

Place, date

\_\_\_\_\_

Place, date

\_\_\_\_\_  
(Controller's signature)

\_\_\_\_\_  
(Contractor's signature)

## Quick reference guide to the specifications set out in the GDPR

GDPR regulation	Clause(s) in this agreement
Art. 28 (2), sentence 1	8.1
Art. 28 (2), sentence 2	8.8
Art. 28 (3), sentence 1	2
Art. 28 (3), sentence 2, (a)	4.4
Art. 28 (3), sentence 2, (b)	6.2
Art. 28 (3), sentence 2, (c)	5.1
Art. 28 (3), sentence 2, (d)	8
Art. 28 (3), sentence 2, (e)	7.3
Art. 28 (3), sentence 2, (f)	7.6; 9.3; 9.4
Art. 28 (3), sentence 2, (g)	10
Art. 28 (3), sentence 2, (h)	11
Art. 28 (4)	8.4

## Appendix 1: List of services ordered

(Nature and purpose of the processing, type of data and categories of data subjects)

<p><b>Service</b></p>	<p>The services offered by Kögel are designed to assist customers with their fleet management operations. Both vehicle and driver data can be recorded by installing the telematics devices provided by idem in the vehicles.</p> <p>In the context of the services booked by the customer, the data collected is transmitted to a server operated by IDEM over the mobile network. The data is then displayed in evaluated form within a protected portal belonging to the customer. Support may also be required as part of system usage.</p>
<p><b>Nature of the personal data</b></p>	<p>Depending on the package / setting booked by the customer, the following personal data may be collected:</p> <ul style="list-style-type: none"> <li>• Driver master data</li> <li>• User master data (cargofleet Portal and TCC Administration)</li> <li>• Vehicles' position data (truck / trailer services)</li> <li>• Vehicle data such as speed, load weight, tyre pressure readings, braking system status, loading area door opening status (truck / trailer services)</li> <li>• Driver / vehicle assignment (truck services)</li> <li>• Drivers' driving times (truck services)</li> </ul>
<p><b>Categories of data subject</b></p>	<p>Contractor and their employees / drivers of the vehicles with the installed system / client.</p>
<p><b>Nature and purpose of data processing</b></p>	<p>Provision of the system for fleet management purposes and to assist the drivers in recording working hours, complying with driving and rest times, and reporting expenses.</p> <p>Carrying out support work.</p>

**Appendix 2: List of deployed subcontractors including the processing sites.**

<b>Subcontractor</b> (name, legal status, place of business)	<b>Processing site</b> (if different)	<b>Type of service</b>
idem telematics GmbH Lazarettstraße 4 80636 München		Provision of Cargofleet telematics services, support