

FUMO® Solutions GmbH - General Terms and Conditions of Business

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§1 General – Scope and amendment of the terms and conditions of business

- (1) We enter into contracts only with entrepreneurs in accordance with § 14 of the BGB (natural or a legal entity or partnerships with legal capacity who, at the time at which the Agreement is entered into, are engaging in commercial or independent professional operations). We reserve the right to request suitable proof (HR extract, commercial registration).
- (2) The following general terms and conditions of business (GTC) shall apply to all business relations between us and the Customer, unless other terms and conditions are expressly agreed for a particular service. Our GTC apply exclusively. Deviating, conflicting or supplementary general terms and conditions of business are not recognised by us, even if they are known, unless their validity is expressly agreed upon in writing. Our terms and conditions also apply if we carry out the service unreservedly in the knowledge of Customer conditions that are conflicting or which deviate from our terms or conditions.
- (3) We are entitled to change the GTC when there is a valid reason to do so (change of legal situation/jurisprudence or change in our product offer). We will inform the Customer of any planned change in good time before the change comes into effect. If the Customer does not object to the change within one month of receiving notification of the change, the Customer is deemed to have given his consent and the amended GTC shall constitute the content of the Agreement. When notifying the Customer, we will, in particular, point out the Customer's option to object and the importance of the deadline.

§2 Conclusion of the Agreement

- (1) The Agreement comes into effect when we receive the copy of our written offer signed by the Customer or when we accept the Customer's order on our website.
- (2) A Customer account is required for the conclusion of the Agreement via the website. If necessary, the Customer must first register. The Customer can select the required modules/packages and check and correct any entries up to the moment at which the Customer submits his order, or cancels the order by closing the browser window. A binding order is issued by the Customer by triggering the button "register for a fee". We will immediately send a confirmation of access by e-mail containing the text of the Agreement (content of the order and these GTC). This is not yet an acceptance of the order. The Agreement comes into effect when we accept the order, usually by unblocking the ordered modules on our online platform.

§3 Object of the Agreement

- (1) The following modules and any future modules may be ordered by the Customer, individually or as a package, through the registration process, or subsequently added to an existing module/package (upgrade).
- (2) **Sponsored FUMO account:** If the Customer has received a discount financed by a sponsor, the Customer agrees that a reference to the respective sponsor (name of the sponsor, logo and slogan, if applicable) will be incorporated into the publicly visible profile. The Sponsor and the placement and visual design are determined by us at our sole discretion and may be changed from time to time.

(3) **FUMO Monitor:** In the FUMO Monitor, industry-standard test criteria will be provided for the Customer, for example to ensure compliance with fleet-relevant deadlines (e.g. driver, vehicle, trailer areas, etc.). Legal requirements over and above the industry standard (such as in the pharmaceutical / food / special transport sector, etc.), quality criteria or internal company requirements can be presented by the Customer via their own self-created (private) test criteria and by their own self-created categories in the FUMO Monitor. The Customer is responsible for the input and maintenance of the test criteria and the administration of the relevant dates. The (3) FUMO Monitor provides appropriate recommendations for the deadlines of the test criteria, which the Customer can change and overwrite in the system at any time. The Customer can be proactively reminded by e-mail if the status of a deadline has changed.

(4) **FUMO Profile** is the Customer's publicly visible profile which is available in two versions.

- The FUMO Standard Profile may be booked by Customers within the EU.
- The FUMO Compliant Profile can be booked without restriction by customers from Germany and Austria. For customers outside Germany and Austria, but within the EU, the specificities referred to in point (b) apply.

a) **FUMO Standard Profile:** This is a visible Customer public profile with information about the following company data.

Data

- Company logo, company name, company address, contact person, bank details, website address, e-mail address, tax numbers, traffic manager, insurance/broker
- Country relations and business areas

Documents:

- EU licence/permit
- HR extract / business registration
- Certificate of insurance GüKG 7a
- Self-disclosure minimum pay
- Other documents (such as DIN ISO certificate, GDP, Compliant Carrier certificate, etc.)

The FUMO Customer enters the information, data and documents into the system via an upload function and releases this for publication on the Internet. FUMO does not carry out any checks.

The Customer is prompted every 6 months and is required to check the documents and, if necessary, to renew them or to confirm the validity (update). In the profile, the date of the last update is publicly visible.

b) **FUMO Compliant Profile:** For Customers who have booked the FUMO Compliant Profile service and are from **Germany or Austria**, it is possible to provide the following data, documents and information in a FUMO profile with public access.

Data:

- Company logo, company name, company address, contact person, bank details, website address, e-mail address, tax numbers, traffic manager, insurance/broker
- Country relations and business areas

Documents:

- EU licence/permit

- HR extract / business registration
- Certificate of insurance GüKG 7a / Self-disclosure
- Self-disclosure minimum pay
- Other documents (such as DIN ISO certificate, GDP, Compliant Carrier, etc.)

Certificate check

- **Visible plausibility test** report by FUMO every 6 months
- FUMO Compliant Profile **seal in profile**

The FUMO Customer enters the information, data and documents into the system via an upload function and updates or confirms the validity of all data, documents and self-disclosures every 6 months.

Documents marked with a * are **checked for plausibility** by FUMO at regular 6-monthly intervals. The following additional plausibility checks are also carried out: check call, control fax, control e-mail (with confirmation), and a sanctions list check (sanctions lists of the UN and the EU). Only a visual check for meaningfulness is carried out on additional uploaded documents.

For customers from **outside Germany and Austria**, the following applies: If FUMO was unable to carry out any checks or was only able to carry out a limited check of one of the documents marked with a * because the documents are not complete or are not available in German or English, the seal will be given and the test report will record the exact scope of the test and the result of the test.

- (5) **FUMO Cockpit:** Every FUMO Customer can use the FUMO cockpit to monitor his contractors. The Customer can have the data from the respective FUMO profiles of his contractors displayed in his cockpit by adding the profile of his contractor to the cockpit (if he has a FUMO Profile). The Customer is also able to create his own (private) test criteria and then apply these to his contractors (companies) in order to check them in a documented manner. The Customer can be proactively reminded by e-mail if the status of a deadline has changed
- (6) **FUMO Auditor:** The Customer can use the FUMO monitor to control compliance with the relevant legal regulations in his company (internal audit) and also have compliance certified by us (external audit with certification). The internal audit is included in the FUMO Professional package. The FUMO Premium package includes the external audit as well as the internal audit. If the customer is a group of companies, the FUMO Auditor module must be ordered separately for each legally independent company, provided that each company wishes its own certification in accordance with § 3 (6) (b).
- a) **Internal audit:** The internal audit provides guidance for the Customer in self-monitoring. The Customer can carry out the internal audit as often as required
- The FUMO Auditor queries specific information about the Customer's company and uses this to compile all industry-specific legal standards and other requirements (quality criteria) that are relevant to the Customer. The compilation contains the sub-items at each point (i) test request for the legal standard / requirement, (ii) evaluation scale (iii) specification for the legal basis and the text of the legal standard, (iv) recommended measures for achieving compliance, (v) forms for action (if applicable).
 - If the Customer has submitted an assessment for all test questions, the FUMO Auditor will produce an evaluation stating the percentage of compliance and indicating any serious defects separately. The result is visible in the Auditor. An entry is created in the Auditor for each internal audit carried out. The updates to a previous audit set as a reference audit will be identified (not available to customers performing an internal audit for the first time).

- Using recommendations and forms, the Customer is able to process defects that have been identified. The legal standards and requirements filed in FUMO Auditor will be updated promptly in the event of any change.

b) **External audit and certification:**

- On an agreed date, an external auditor checks compliance with the legal requirements and quality criteria relevant to the Customer. We reserve the right to carry out the audit at our own discretion with our own employee or a qualified partner appointed by us.
- After arranging an appointment, **moving the appointment** is only possible on the following conditions:
 - Moving the appointment is free of charge up to no later than 6 weeks before the agreed date.
 - If the appointment is moved later than 6 weeks before the agreed date, but no later than 4 weeks before the agreed date, an additional fee of € 300 will be charged.
 - If the appointment is moved within 4 weeks of the agreed date, an additional fee of € 500 will be charged.
- Cancelling the appointment can only be done if the customer has booked the external audit separately, and not as part of the FUMO Premium package. If the customer cancels the appointment more than 6 weeks prior to the agreed date, the full fee is due. If the Customer just wants to move the appointment, the above conditions shall apply.
- The result is provided to the Customer via the FUMO Auditor.
- If the Customer achieves a compliance percentage above 80% and no serious defect has been identified, the Customer receives the certificate "Compliant Carrier", "Compliant Shipper" or "Compliant 4PL ". We reserve the right to change the names of the certificates and the design of the signets. We will notify the Customer of any changes in good time.
- A certified Customer is authorised to display the relevant signet in his FUMO profile and also to refer to the certificate elsewhere.
- The validity period of a certificate is 12 months from the date of issue. After this deadline, plus a transitional period of one month, the Customer may not use the signet in the FUMO profile or elsewhere (for example, in brochures, on a website, or as a truck sticker) and must immediately remove existing signets. The same applies to all other references to the certificate or depictions that may give the impression that the Customer still has a valid certificate

- (7) **Storage space:** The Customer is provided with a storage space for documentation purposes. Maximum file size is limited to 2.5 MB (PDF). The storage space is limited to 10 GB. If the customer is a group of companies, the limit applies to all companies together. If the customer has higher requirements, an individual increase of the thresholds can be arranged for a surcharge. If it appears that the customer has such requirements, we will submit an offer on a proactive basis

§4 Requirements of the Customer

- (1) Using our service requires a state-of-the-art computer system with functional Internet access and a current standard web browser. This system acts as a client for using the application provided.
- (2) The Customer is responsible for establishing the connection to us and operating the necessary client computer for using our services.

- (3) The Customer must inform us immediately of any changes to his name, his company, his home address or business address, his account and the data and documents relevant to FUMO profiles (permission, insurance protection, etc.).
- (4) The Customer is required to cooperate by logging in correctly with Customer number, user identification and password in order to ensure that our services function correctly.
- (5) The Customer must keep his personal user name and password secret and may not make these known to third parties.
- (6) If there is any suspicion that access data could have become known to unauthorised persons, the Customer must immediately set up a new password and notify us accordingly.
- (7) The Customer is required to notify us immediately of any defects or damage which could compromise the security or operation of our services. The Customer will take all reasonable measures to make it possible to identify any defects or damage and to facilitate their repair.

§5 Contractual penalty in the event of breach of duty by the Customer

- (1) The Customer shall owe a contractual penalty of EUR 5,000.00 for each individual culpable breach, if despite an appropriate request by us
 - he does not immediately correct incorrect or inaccurate information;
 - he uses or continues to use the signet without successful certification or after expiry of the validity of a certificate plus the transitional period according to § 3 paragraph 6 letter b) bullet point 6;
 - he provides other indications of a non-existent certificate, or a certificate the validity of which (and that of the transitional period) has expired, or does not immediately remove such indications; or
 - uses images giving the wrong impression that he has a valid certificate, or a certificate the validity of which (and that of the transitional period) has not yet expired, or does not immediately remove such images.
- (2) The assertion of other claims, in particular due to trademark infringement, shall remain unaffected.

§6 Maintenance

- (1) We shall maintain the software for the duration of the Agreement. Maintenance of the software covers updates, error diagnosis as well as the repair of any faults and malfunctions.
- (2) Since the data processed with our help is the sole property of the Customer, we agree to open the Customer data only for the purpose of maintaining the software, diagnosing errors and repairing faults and malfunctions.
- (3) The support team is available from Monday to Friday from 8 am to 5 pm by telephone and by email.

§7 Workinghours, maintenance work, fail-safe operation

- (1) We provide the Customer with the application during the agreed term with availability of more than 99.00% per year, but excluding the agreed times for planned non-availability. Malfunctions in exceptional circumstances will amount to a maximum of 8 hours per year.
- (2) The times of planned non-availability for carrying out maintenance work on the service or for installing relevant updates will be set up by us every Saturday or Sunday from 2 pm to 8 am. The Customer will be notified by e-mail of maintenance work to be carried out during secondary working hours 24 hours before this work is carried out.

- (3) The Customer's primary working hours are from 6 am to 6 pm Monday to Friday. The Customer's secondary working hours are from 6 pm to 6 am.

	Mo	Di	Mi	Do	Fr	Sa	So	Feiertag
Primäre Arbeitszeit	8.00 bis 18.00 Uhr							
Sekundäre Arbeitszeit	18.00 bis 8.00 Uhr							
Tertiäre Arbeitszeit						8.00 bis 14.00 Uhr		
Primäres Wartungsfenster						14.00 bis 8.00 Uhr		
Sekundäres Wartungsfenster	18.00 bis 8.00 Uhr							

- (4) In case of force majeure, we are not required to carry out our contractual obligations. Force majeure relates to circumstances for which we are not responsible and which are beyond our control, such as fire, explosions, floods, war and technical problems relating to the Internet which cannot be influenced by us.

§8 Billing and payment, price adjustments

- (1) The hire fee for the software shall be paid for the first time at the beginning of the month after the beginning of the contract period and then for 12 months in advance, or monthly in advance. The invoice is given to the Customer at the beginning of the rental agreement or at the beginning of the relevant month.
- (2) For external audits, payment is due once the Customer has ordered the external audit and we have submitted an invoice. If the customer has booked the FUMO Premium package, the fee for the external audit is already covered by the monthly fee in accordance with paragraph 1.
- (3) Costs for external audits or other consulting services (travel expenses, accommodation costs) will be invoiced separately to the Customer.
- (4) We reserve the right to adjust the hire fee for individual or all modules/packages as our costs develop. We will announce such a price adjustment at least 3 months in advance. If the price adjustment is disadvantageous for the Customer, the Customer reserves the right to extraordinary termination. In this case, the Customer may terminate the affected module or the Agreement as a whole in accordance with § 9 (but without complying with a deadline), which will take effect from the date on which the price adjustment comes into force.
- (5) For a one-off trial period, a one-off lump-sum fee is payable, which is due when the invoice is submitted. The fee also includes instruction/ training according to § 6 paragraph 5 in this case. Only applicable travel and accommodation costs will be charged.

§9 Term of the Agreement and termination

- (1) For a one-off test phase for flat-rate fee (§ 8 (5)), the term is limited to 2 months. For all regular contracts the following provisions apply.
- (2) The initial term of the Agreement is for 12 months or, if the Customer has made use of the relevant offer at a reduced price, in accordance with the offer. A downgrade to a smaller package is only possible at the end of the initial term.
- (3) The Agreement is automatically extended by a further 12 months, if the Customer does not terminate it by serving 3 months' notice before the end of the current term.
- (4) A new 12-month term of the entire Agreement shall begin when the initial order of the modules is placed, whenever a further module (upgrade) is ordered and whenever notice is served on an existing module (downgrade). Termination and automatic renewal shall be subject to paragraph 3.

- (5) Extraordinary termination due to or relating to non-compliance only possible after prior written warning has been given with an appropriate deadline of no less than 3 business days. If the Party that is entitled to terminate the Agreement is aware of the circumstances justifying extraordinary termination for more than three business days, the Party can no longer base the termination on these circumstances.
- (6) Notwithstanding the provision in paragraph 4, we may terminate the Agreement without notice if the Customer is in arrears with payment of the fee or a not insignificant part of the fee for two consecutive months, or is in arrears for a period exceeding two months for an amount that is equivalent to the payment owed for two months. In this case, we shall also be entitled to demand immediate payment of a lump sum compensation of a quarter of the remaining basic monthly charge up until the end of the regular period of the Agreement. The Customer reserves (3) the right to provide evidence that damages are lower.
- (7) We shall reserve the right to claim for compensation for any arrears (including arrears of short duration) and in particular the statutory interest on arrears. If we have demanded the flat-rate compensation in accordance with the provisions of paragraph 5, this will be offset against the damages caused by late payment.
- (8) Extraordinary termination may also be based on the Customer being insolvent or being threatened with insolvency. The Customer must notify us without delay.
- (9) Any notice must be made in writing to be effective.
- (10) If the customer requires that the data stored in his storage space be deleted, we reserve the right to exclude data from the deletion, if this is necessary to fulfil a legal obligation or to assert, exercise or defend legal claims (Art. 17 (3) of the GDPR). The data is then stored only for these purposes. This applies in particular to documents that the customer has transmitted to or received from other users of our online platform.

§10 External seminars and other events

- (1) Notwithstanding § 2, the Agreement shall take effect if we explicitly accept the Customer's enrolment.
- (2) The Customer may withdraw from the Agreement up to 21 days before the start of the event and must do so in writing (a fax suffices). The date of the postmark or time stamp is the date by which the Customer is deemed to have served notice. The Customer is liable to pay the full participation fee if the Customer withdraws within 2 weeks of the event taking place. The same shall apply if the Customer does not attend the event or leaves the event early. If the Customer wishes to provide a substitute participant, he must inform us before the start of the event.
- (3) Splitting participation between a number of individual participants on a time-based arrangement is not permissible. Partial booking of an event is only possible, insofar as this is expressly provided in the offer.
- (4) Events will be held in a conference hotel in Germany. The venue, time scale and any ancillary services are determined by the offer. Training materials and sustenance (drinks; coffee, cold drinks and lunch for all-day events) are always included in the service we provide. Test fees and similar fees payable to third parties (such as the chamber of commerce) are not included in our service.
- (5) We reserve the right to make changes that do not materially affect the purpose of the event. In particular, we may replace an advertised speaker with a speaker who has equivalent qualifications or move the event to a different location.
- (6) We reserve the right to postpone or cancel an event for reasons that are beyond our control in particular if there is not a minimum number of participants or if a speaker is unable to attend).
- (7) If we need to change the time of the event or move the event to a location which is more than 50 km from the advertised venue, the Customer shall have the right to withdraw from the Agreement without having to serve the notice period stipulated in paragraph 2.

- (8) If the event is cancelled or the Customer withdraws in accordance with the circumstances outlined in paragraph 7, there will be no participation fee. Any participation fee that has already been paid will be fully reimbursed. Any further claims due to non-fulfilment of the Agreement are excluded.
- (9) The participation fees are net plus the value-added tax applicable at the time at which the service is provided. The Customer is responsible for making and paying for his own travel arrangements to and from the event and organising and paying for any overnight accommodation.
- (10) The participation fees are payable immediately after the invoice has been issued by us. The Customer is deemed to be in arrears if payment is not paid within 10 days of the date on which the invoice is issued (no reminder will be issued). We may also invite the Customer to pay on the spot in cash prior to participating in the event.

§11 In-house seminars and other events /activities at the Customer's premises

- (1) Notwithstanding § 2, the Agreement comes into effect if we explicitly accept the Customer's enrolment.
- (2) The Customer may withdraw from the Agreement up to 8 weeks before the start of the event/activity and must do so in writing (a fax suffices). The date of the postmark or time stamp is the date by which the Customer is deemed to have served notice of withdrawal. The Customer is liable to pay the full participation fee if the Customer withdraws within 8 weeks of the event taking place.
- (3) The Customer is responsible for the necessary equipment in the event area as well as for providing sustenance to trainers/speakers. Unless otherwise agreed, PCs/laptops (with PowerPoint), projectors, screen, flipchart and the metaplan method should be provided.
- (4) We reserve the right to make changes that do not materially affect the purpose of the event. In particular, we may replace an advertised trainer/speaker with a trainer/speaker who has equivalent qualifications.
- (5) The participation fees are net plus the value-added applicable at the time at which the service is provided. Participation fees are payable immediately after the invoice has been issued by us. The Customer is deemed to be in arrears if payment is not paid within 8 weeks of the date on which the invoice is issued (no reminder will be issued).

§12 Intellectual property and rights of use

- (1) The Customer shall be granted a simple, non-transferable right of use to use the contents made accessible via our services for his own use during the term of the Agreement. Training documents provided in the course of events are only intended for the Customer's personal use. Permanent reproduction in any form whatsoever, transfer to third parties (including the temporary transfer), publication or use of the contents for the production of the Customer's own products or services are not permissible.
- (2) Use of our word and figurative marks, alluding to a reference about a certificate issued by us and the indication of the corresponding signet in the FUMO profile, requires our written consent. The signet for the certificates issued by FUMO Audit or other certificates issued by us as well as the associated truck labels may only be used in conjunction with a valid certificate. As soon as the period of validity plus the transitional period according to § 3 paragraph 6 letter b), bullet point 6 expires, the right to use expires automatically.
- (3) The Customer authorises us to use his company name and his logo. We can name the Customer in a reference list and also use the logos used in FUMO profiles. The Customer grants us a simple, non-transferable right of use to company identifiers/trademarks for the purpose of self-advertising and PR.

§13 Liability and Limitations of Liability

- (1) Our no-fault liability for compensation (§ 536a BGB) is excluded for deficiencies existing at the time at which this Agreement comes into force.

- (2) Our liability on the basis of wilful intent or gross negligence, on the basis of a provided warranty or under the German Product Liability Act is unlimited.
- (3) For minor negligence, we assume unlimited liability in cases of injury to life, body or health. In addition, our liability is limited as follows:
 - a) For any minor breach of a material contractual obligation jeopardising the implementation of the Agreement, liability is limited to compensation for the foreseeable, typically occurring damage. The same applies to liability for gross negligence or wilful intent of our employees who are not our directors.
 - b) We shall only be liable for indirect damages, consequential damages, loss of profit or the reimbursement of futile expenses if these are based on the wilful intent or gross negligence of our directors.
- (4) The Customer is always responsible for the authenticity of data and documents which the Customer makes available to us. We accept no liability for information provided by our Customers not being correct or up-to-date. In addition, our liability is limited as follows:
 - a) For FUMO Compliant Profile Customers: We shall not be held liable for any damages which are caused by the Customer not informing us of any changes to the data and documents within our 6-month inspection period.
 - b) For FUMO Standard Profile Customers: The Customer is completely responsible for the data, documents, etc., and their validity and completeness. We accept no liability for this.
- (5) The Customer is responsible for the test criteria (so-called private test criteria) and categories set by the Customer in FUMO Monitor. We accept no liability for this.

§14 Data security and data protection

- (1) We shall comply with relevant data protection regulations, especially the data protection regulations in Germany. We shall also bind our employees to a commitment to data secrecy in connection with this Agreement and its implementation in accordance with the provisions of §5 of the BDSG (from 25.05.2018: §53 of the BDSG), unless they have already undertaken a commitment to data secrecy on a general level.
- (2) We collect and use Customer-related data only insofar as is necessary for the purposes of this Agreement. The Customer agrees to the collection and use of such data for this purpose.
- (3) As long as application data is within our sphere of influence, the requirements pursuant to paragraphs 1 and 2 also extend beyond the term of this Agreement.
- (4) The Parties shall enter into a separate agreement for the data processing agreement. In the event of any inconsistencies between this Agreement and the data processing agreement, the latter shall take precedence over this Agreement.
- (5) Please also refer to our data protection policy.

§15 Final provisions

- (1) This Agreement shall be governed exclusively by German law. UN sales law shall not apply.
- (2) Any deviating agreements must be made in writing to be effective. This also applies to the suspension of the above requirement for the written form.
- (3) Possible invalidity of individual provisions does not affect the validity of the remaining provisions.

- (4) If the Customer is a trader, a legal entity under public law or a public special fund under public law, the exclusive place of jurisdiction for all disputes arising from this Agreement is our place of business. The same applies if the Customer does not have a general place of jurisdiction in Germany or if the Customer's address or habitual residence is not known at the time the complaint is filed.
- (5) The Customer is not entitled to assign claims from the Agreement to a third party, to transfer the Agreement as a whole to a third party, or to allow third parties to make use of the contractual services for a fee or free of charge without our written consent.