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LOYALTY ENGINE



Master Subscription Agreement

DEFACTO Loyalty

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Point of contact Customer:

Point of contact DEFACTO GmbH:

DEFACTO GmbH

Am Pestalozziring 1-2

91058 Erlangen

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1 General

Master Subscription Agreement

THIS AGREEMENT GOVERNS YOUR ACQUISITION AND USE OF OUR SERVICES.

IF YOU REGISTER FOR A FREE TRIAL FOR OUR SERVICES OR FOR FREE SERVICES, THE APPLICABLE PROVISIONS OF THIS AGREEMENT WILL ALSO GOVERN THAT FREE TRIAL OR THOSE FREE SERVICES.

BY ACCEPTING THIS AGREEMENT, BY CLICKING A BOX INDICATING YOUR ACCEPTANCE; BY EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT; OR, FOR FREE SERVICES, BY USING SUCH SERVICES, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

In addition, You may not access the Services for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes

This Agreement was last updated on February 6th, 2019. It is effective between You and Us as of the date of Your accepting this Agreement.

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4 DEFINITIONS

"Affiliate" means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes of this definition, means direct or indirect ownership, signatory authority, or control of more than 50% of the voting interests of the subject entity.

"Malicious Code" means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.

"Order Form" means the documents for placing orders hereunder, including addenda thereto, that are entered into between You and Us or any of Our Affiliates from time to time, including addenda and supplements thereto. By entering into an Order Form hereunder, an Affiliate agrees to be bound by the terms of this Agreement as if it were an original party hereto. Order Forms shall be deemed incorporated herein by reference.

"Purchased Services" means Services that You or Your Affiliates purchase under an Order Form, as distinguished from those provided pursuant to a free trial.

"Services" means the products and services that are ordered by You under a free trial or an Order Form and made available by Us. This includes software that includes object code versions of the product, together with the updates, upgrades, modifications, or enhancements owned and provided by DEFACTO to You pursuant to this agreement.

"Software" means the object code (machine readable) version of any computer programs or apps offered by Us and any ancillary data files, modules, libraries, tutorial, or demonstration programs or other components and copies of any of the foregoing or portions thereof.

"User" means individuals who are authorized by You to use the Services, for whom subscriptions to a Service have been ordered, and who have been supplied user identifications and passwords by You (or by Us at Your request). Users may include but are not limited to Your employees, consultants, contractors and agents, and third parties with which You transact business.

"We," "Us" or "Our" means DEFACTO described in Section 16

"You" or "Your" means the company or entity for which You are accepting this Agreement on behalf of, and Affiliates of that company or entity.

"Personal Data" has the meaning given to it in the General Data Protection Regulation (Regulation (EU) 2016/679);

"Website" collectively refers to all websites and domains owned by Us.

"Confidential Information" means, in respect of a party to this Licence Agreement, any information disclosed by that party to the other party during the term of the Licence Agreement that at the time of disclosure: (a) was marked as "confidential"; (b) was described by that party as "confidential"; or (c) should have been understood by the other party to be confidential; and, in the respect of the Licensee, this shall include all the Licensee Personal Data;

"Data Protection Laws" means all applicable laws relating to the processing of Personal Data including, for the period during which it is in force, the General Data Protection Regulation (Regulation (EU) 2016/679)

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“Salesforce Platform” means the CRM system provided by Salesforce and available via www.salesforce.com or any such unique resource locator as designated by Salesforce ;

“Minimum Requirements” means the minimum technical specification required to enable the Software to function in accordance with the Documentation and/or at all, as set out in the Documentation and/or on the Salesforce Platform ;

“Working Hours” means 9.00am to 5.00pm in Munich.

5 Licences

Subject to all the terms and conditions of this Licence Agreement and in consideration for the payment of the Licence Fees, DEFACTO hereby grants You and your affiliates a worldwide, non-exclusive, non-transferable licence to use the Software on the Salesforce Platform in accordance with the Documentation, during the term of this agreement.. Such use shall be for You and your affiliate’s internal purposes only.

Except as expressly permitted in this Licence Agreement or required under applicable law, You shall not, and shall not permit others to: (a) modify, translate, create derivative copies of or copy the Software, in whole or in part; (b) reverse engineer, decompile, disassemble or otherwise reduce the object code of the Software to source code form; (c) distribute, sub-license, assign, share, time-share, sell, rent, lease, grant a security interest in, use for service bureau purposes, or transfer the Software or Your right to use the Software; (d) remove or modify any copyright, trademark, or other proprietary notices of DEFACTO contained within the Software; or (e) use the Software in any manner not expressly authorised by this Licence Agreement.

The Licensee guarantees that all Users and Your Affiliates comply with the terms of this Licence Agreement. If You wish to increase the number of licensed Users (Salesforce Orgs), You must submit a written request to do so to DEFACTO.

You guarantee that you have the right to use the Salesforce Platform and the right to use any other third party software that You use from time to time in conjunction with the Software.

NO LICENSE TO COMPETITORS. You are not granted a license to access or use the Services if You offer services competitive or substantially similar to Ours or are in indirect or direct competition with Us, except with Our prior written consent. In addition, You may not access the Services for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes.

6 Grant of Rights and Non-enticement agreement

DEFACTO has sole and exclusive ownership of all right, title, and interest in and to the Software, including all copyright and any other intellectual property rights therein. This Licence Agreement conveys a limited licence to use the Software and shall not be construed to convey title to or ownership of the Software to You or any other person. All rights in and to the Software not expressly granted herein are reserved by DEFACTO

RIGOROUS ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS. If the software is used by You with any intent to reverse engineer, decompile, create derivative works, and the exploitation or unauthorized transfer of, any of Our intellectual property and trade secrets, to include any exposed methods or source code where provided, no licensed right of use shall exist, and any products created as a result shall be judged illegal by definition of all applicable law. Any sale or resale of intellectual property or created derivatives so obtained will be prosecuted to the fullest extent of all local, federal and international law.

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6.1 Restrictions.

(a) You may not: decompile, reverse engineer, disassemble, analyze, modify, adapt, convert, create derivative works from, or otherwise attempt to derive, the Services

(b) You may not: sell, sublicense, redistribute, reproduce, transmit, circulate, disseminate, translate or reduce to or from any electronic medium or machine readable form the Services or any data/information provided to the You through the Service to a person

(c) You may not vary or amend this Agreement without Our prior written approval

(d) You may not except as otherwise permitted in this Agreement, publish, promote, broadcast, circulate or refer publicly to Our name, trade name, trademark, service mark, or logo

(e) You may not commit any act or omission the likely result of which is that Our reputation will be brought into disrepute or which act or omission could reasonably be expected to have or does have a material and adverse effect on Our interests

(f) You agree that You shall only use the Services and Documentation in a manner that complies with all applicable laws, including, but not limited to, applicable restrictions concerning copyright and other intellectual property rights

(g) This Agreement does not grant You any rights in connection with any trademarks or service marks of Us or Our suppliers. All title and intellectual property rights in and to the Services (including but not limited to any images, photographs, animations, video, audio, music, and text incorporated into the Services, and any copies of the Services) are owned by Us, Our suppliers, or are publicly available. All title and intellectual property rights in and to the content which may be accessed through use of the Services is the property of the respective content owner and may be protected by applicable copyright or other intellectual property laws and treaties. This Agreement grants You no rights to use such content. All rights not expressly granted under this Agreement are reserved by Us and Our suppliers

(h) You may not permit any third party to access the Services except as permitted herein or in an Order Form

(i) You may not copy, frame or mirror any part or content of the Services, other than copying or framing on Your own intranets or otherwise for Your own internal business purposes

(j) You may not copy any features, functions or graphics of the Services

(k) You may not collaborate with other individuals or entities to create derivative works

(l) You may not communicate with other individuals or entities features, functions, or user interface components for the purpose of creating competitive products. Any attempt to do so will be prosecuted to the fullest extent of all local, federal and international law.

In addition, the Services include license protection mechanisms that are designed to manage and protect Our intellectual property rights. You must not modify or alter those features to try to defeat the Services use rules that the license protection mechanisms are designed to enforce.

7 PURCHASED SERVICES

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7.1 Provision of Purchased Services.

We shall make the Purchased Services available to You pursuant to this Agreement and the relevant Order Forms during a subscription term. You agree that Your purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Us regarding future functionality or features.

7.2 Subscriptions.

Unless otherwise specified in the applicable Order Form, (i) Services are purchased in the form of Salesforce org subscriptions intended to be deployed in production environments and may be accessed by no more than the specified number of Users listed (if applicable), (ii) additional subscriptions as well as functional add-ons or extensions based on additional data volume may be added during the applicable subscription term at the same pricing as that for the pre-existing subscriptions thereunder, prorated for the remainder of the subscription term in effect at the time the additional subscriptions are added, and (iii) any added subscriptions shall terminate on the same date as the pre-existing subscriptions. If User Subscriptions are purchased, they cannot be shared or used by more than one User but may be reassigned to new Users replacing former Users who no longer use the Services.

8 USE OF THE SERVICES

8.1 Our Responsibilities.

We are not responsible for non-availability of the Purchased Services due to: (a) planned downtime (of which We shall give advanced notice and which We shall schedule to the extent practicable during the weekend hours from 6:00 p.m. Friday to 3:00 a.m. Monday CET), or (b) causes beyond Our reasonable control, including without limitation, acts of God, acts of government, floods, fires, earthquakes, civil unrest, acts of terror, strikes or other labor problems, Internet service provider failures or delays, or denial of service attacks. We shall provide the Purchased Services only in accordance with applicable laws and government regulations.

8.2 Your Responsibilities.

You guarantee (i) Users' compliance with this Agreement, (ii) the accuracy, quality and legality of Your Data and of the means by which You acquired Your Data, (iii) that You use commercially reasonable efforts to prevent unauthorized access to or use of the Services, and notify Us promptly of any such unauthorized access or use, and (iv) that You and Your customers use the Services only in accordance with applicable laws and government regulations.

You shall not (a) make the Services available to anyone other than Users, (b) sell, resell, rent or lease the Services, (c) use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use the Services to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of the Services or third-party data contained therein, or (f) attempt to gain unauthorized access to the Services or their related systems or networks. You agree to indemnify Us from and against all loss and damage you may suffer, and from all actions, claims, proceedings or demands by third parties against Us, including all legal and prosecution costs, arising in any way from a breach of this Section 4.3 or otherwise set forth in this agreement.

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8.3 Usage Limitations.

Services may be subject to other limitations including and without limitation the following: (1) You may not tamper with or circumvent any security technology included with the Service; (2) Our delivery of data to You as required by Your regular use of the Services does not transfer any promotional use rights to You, and does not constitute a grant or waiver of any rights of the copyright owners; (3) You shall not use the Services in violation of any applicable laws or for any purpose not specifically permitted in this Agreement

8.4 Publicity Rights.

You acknowledge that providing customer references and/or including logos on Our Websites, printed materials, or other promotions is a critical part to Our success in keeping the cost of Our Purchased Services low by increasing Our brand reputation and reducing Our cost of sales. To that end, unless You notify Us via email, You grant Us the right to use Your name and/or logo for any advertising, publicity, or other business purpose at any time during the term of this Agreement, and may continue to use materials generated during the term of the Agreement for a period of twenty four (24) months thereafter. Upon receiving Your email, We will attempt to delete Your customer reference, customer story, and/or logo to the extent possible or replace the logo with an image approved by You.

9 SUPPORT SERVICES AND UPDATES

DEFACTO will make available to the Licensee an email-based helpdesk facility for the purposes of: (a) assisting the Licensee with the configuration of the Software and the integration of the Software with the Salesforce Platform; (b) assisting the Licensee with the proper use of the Software; and/or (c) determining the causes of errors and fixing errors in the Software. DEFACTO shall use reasonable endeavours to respond to issues raised through the helpdesk within 16 Working Hours.

DEFACTO shall have no obligation to provide support in respect of any fault or error caused by the improper use of the Software or the use of the Software otherwise than in accordance with the Documentation.

a) If You purchase a premium support package from DEFACTO, then: (a) the helpdesk referred to above shall be accessible via email and telephone; (b) DEFACTO shall use reasonable endeavours to respond to issues raised through the helpdesk within 4 Working Hours; and (c) You shall pay a support fee equal to a defined percentage of the Licence Fees to DEFACTO, at the same time as the Licence Fees are paid. The premium support package can also be specified individually. Please contact our sales personnel for more information.

b) From time to time, DEFACTO may release Updates to all the related system components through the Salesforce Platform's App Exchange.

c) DEFACTO shall send You a written notice of each Update. Updates will be installed automatically during the reasonable times.

If Update could not be applied to your instance of the Software within the period of 5 days, DEFACTO shall be entitled to refuse to provide support services to You.

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d) In the case of an Update that is designed (in whole or part) to address a security vulnerability in the Software, and if it could not be applied to Your instance of the Software during the period of 2 days following the issue of DEFACTO' notice, DEFACTO shall not be liable for any loss or damage suffered by the Licensee and arising out of such failure.

e) In order to be able to provide Updates, Support and Service DEFACTO needs to be granted full Administrative rights of resp. Heroku Instance.

10 FEES AND PAYMENT FOR PURCHASED SERVICES

10.1 Fees.

You shall pay all fees specified in all Order Forms hereunder. Except as otherwise specified herein or in an Order Form, (i) fees are based on services purchased and not the actual use of the solution, (ii) payment obligations are non-cancelable and fees paid are non-refundable, and (iii) the number of subscriptions purchased cannot be decreased during the relevant subscription term stated on the Order Form. Unless otherwise stated, Subscription fees are based on annual periods that begin on the subscription start date and each annual anniversary thereof; therefore, fees for subscriptions added in the middle of a annual period will be charged for the monthly periods remaining in the subscription term.

10.2 Invoicing and Payment.

We will invoice You in advance of Your relevant subscription term or otherwise in accordance with the relevant Order Form. Unless otherwise stated in the Order Form, invoiced charges are due net fourteen days from the invoice date. You are responsible for providing complete and accurate billing and contact information to Us and notifying Us of any changes to such information. In the event that payment is made via a third party agent, You shall indemnify Us and keep Us indemnified against any loss, damage, costs and expenses We suffer or incur as a result of any default by the third party agent in making payment in accordance with the terms of the Order Form or as otherwise set forth in this Agreement.

10.3 Overdue Charges.

If any charges are not received from You by the due date, then at Our discretion, such charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid.

10.4 Suspension of Service and Acceleration.

If any amount owed by You under this or any other agreement for Our services is thirty or more days overdue, We may, without limiting Our other rights and remedies, accelerate Your unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend Our services to You until such amounts are paid in full. We will give You at least seven days' prior notice that Your account is overdue, in accordance with Section 12.1, before suspending services to You.

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10.5 Taxes.

Unless otherwise stated, Our fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "Taxes"). You are responsible for paying all Taxes associated with Your purchases hereunder. If We have the legal obligation to pay or collect Taxes for which You are responsible under this paragraph, the appropriate amount shall be invoiced to and paid by You, unless You provide Us with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, We are solely responsible for taxes assessable against it based on Our income, property and employees.

10.6 Records and Review.

We have audit rights with respect to Your usage of the Services, including audit or inspection of Your access and utilization of the Services.

11 PROPRIETARY RIGHTS

11.1 Reservation of Rights in Services.

Subject to the limited rights expressly granted hereunder, We reserve all rights, title and interest in and to the Services and documentation, including all related intellectual property rights. No rights are granted to You hereunder other than as expressly set forth herein. The Services are protected by copyright laws. Title, ownership rights and intellectual property rights in and to the content accessed through the Software and the Services ("Content") shall be retained by the applicable Content owner and may be protected by applicable copyright or other law. This license gives you no rights to such Content. In addition, We shall have a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into the Services any suggestions, enhancement requests, recommendations or other feedback provided by You.

12 CONFIDENTIALITY

12.1 Definition of Confidential Information.

As used herein, "Confidential Information" means all confidential information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Your Confidential Information shall include Your Data; Our Confidential Information shall include the Services, Our trade secrets, know-how and information relating to the Services' underlying technology, Our clients, Our customers, Our business plans, Our marketing activities, and Our finances; and Confidential Information of each party shall include the terms and conditions of this Agreement and all Order Forms, as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information (other than Your Data) shall not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received

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from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

12.2 Protection of Confidential Information.

The Receiving Party shall use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) (i) not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) except as otherwise authorized by the Disclosing Party in writing, to limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees, contractors and agents who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. Neither party shall disclose the terms of this Agreement or any Order Form to any third party other than its Affiliates and their legal counsel and accountants or other consultants, who are bound by professional confidentiality without the other party's prior written consent.

12.3 Compelled Disclosure.

The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.

13 Processing of personally identifiable data

13.1 Regulations according to Art. 28 EU-GDPR

Within the scope of the agreed upon service and this agreement You act as the "Controller" according to Art. 4 EU-GDPR. We act as "Processor" according to Art. 4 EU-GDPR. We process personally identifiable data on your behalf and only on Your documented instructions. It is Your responsibility to define the purpose and the legal basis for the processing. We may disclose any personal data to third parties only on Your documented instruction or as required by law. In that case We will inform You about that legal requirement before processing, unless that law prohibits such information on important grounds of public interest.

All persons authorized to process personal data have committed themselves to confidentiality by signing a confidentiality agreement.

We assist You by appropriate technical and organizational measures, insofar as this is possible, to respond to requests for exercising the data subject's rights laid down in Chapter 3 EU-GDPR. We assist You in ensuring compliance with the obligations pursuant to Articles 32 to 36 EU-GDPR taking into account the nature of processing and the information available to Us.

On Your documented instruction, We delete or return all personal data to You after the end of this agreement unless We are required by law to store the personal data for an extended period of time. In that case We will inform You about this requirement and the retention period.

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We make available to You all information necessary to demonstrate compliance with the obligations of the controller according to EU-GDPR and allow for and contribute to audits, including inspections, conducted by an authorized auditor. We reserve the right to refuse an auditor if there is a close relationship between the auditor and one of our competitors. Inspections have to be announced at least 2 (two) weeks in advance. Failure to announce inspections results in a waiver of our obligation to allow and support the inspection.

We may not engage any subprocessor without Your prior authorization. By signing this agreement You authorize engagement of the following subprocessors:

We will notify You of any change in the engagement of subprocessors 6 (six) weeks in advance. You may withhold your consent to the change not unduly. You consent to the processing of personal data outside of the EEG

13.2 Personal data based on the usage of the service.

Subject to the limited rights granted by you hereunder, We acquire no right, title or interest from you or Your licensors under this Agreement in or to Your Data, including any intellectual property rights therein. You acknowledge that the Services may contain functions for collecting information related to the users of Our Services. You agree that We may also collect and track personally identifiable information about the users, including but not limited to their IP address, the type of hardware they use, and the type of browser they employ. We reserve the right to compile, save, use within the scope of Our activities, and analyze any and all of this data (registration data, and use history). We shall use such data for internal purposes only, including for the purposes of responding to users requests for information and for contacting users. We may provide aggregated statistics about the use of the Services to third parties, but such information will be aggregated so that it does not identify a particular individual or company. You agree that You have the legal basis for processing personal data of the users of Our Services and that You fulfill your obligations according to Articles 12 to 23 EU-GDPR.

We will maintain administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Your Data according to Art. 32 EU-GDPR, as described in the Documentation. Those safeguards will include, but will not be limited to, measures for preventing access, use, modification or disclosure of Your Data by Our personnel except (a) to provide the Purchased Services and prevent or address service or technical problems, (b) as compelled by law in accordance with Section 8.3 (Compelled Disclosure) below, or (c) as You expressly permit in writing. Except with respect to a Free Trial, to the extent that SFDC processes any Personal Data (as defined in the DPA) contained in Customer Data, on Customer's behalf, in the provision of the Services, the terms of the data processing addendum at <http://www.sfdcstatic.com/assets/pdf/misc/data-processing-addendum.pdf> ("DPA"), which are hereby incorporated by reference, shall apply and the parties agree to comply with such terms. For the purposes of the Standard Contractual Clauses attached to the DPA, when and as applicable, Customer and its applicable Affiliates are each the data exporter, and Customer's signing of this Agreement, and an applicable Affiliate's signing of an Order Form, shall be treated as signing of the Standard Contractual Clauses and their Appendices.

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14 DISCLAIMERS

14.1 Disclaimer.

EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

15 LIMITATION OF LIABILITY

15.1 Limitation of Liability.

IN NO EVENT SHALL THE AGGREGATE LIABILITY OF EACH PARTY TOGETHER WITH ALL OF ITS AFFILIATES ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY YOU AND YOUR AFFILIATES HEREUNDER FOR THE SERVICES GIVING RISE TO THE LIABILITY IN THE TWELVE MONTHS PRECEDING THE FIRST INCIDENT OUT OF WHICH THE LIABILITY AROSE. THE FOREGOING LIMITATION WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, BUT WILL NOT LIMIT YOUR AND YOUR AFFILIATES' PAYMENT OBLIGATIONS UNDER THE "FEES AND PAYMENT" SECTION ABOVE.

15.2 Exclusion of Consequential and Related Damages.

IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ANY LOST PROFITS, REVENUES, GOODWILL, OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER, BUSINESS INTERRUPTION OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF A PARTY'S OR ITS AFFILIATES' REMEDY OTHERWISE FAILS OF ITS ESSENTIAL PURPOSE.

15.3 NO LIABILITY.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL WE BE LIABLE TO YOU FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, LOSS OF DATA OR DATA BEING RENDERED INACCURATE, LOST SAVINGS, OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES, ARISING OUT OF THE USE OR INABILITY TO USE OUR SERVICES, EVEN IF PASSAGE TECHNOLOGY OR A DEALER AUTHORIZED BY US HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

15.4 EXCEPTIONS

Any limitation of liability does not apply in case of gross negligence and/or willful misconduct. In these cases Contractor is liable without limitation.

Any limitation of liability does not apply to any mandatory statutory liability, in particular to liability under the German Product Liability Act (Produkthaftungsgesetz), liability for assuming a guarantee (Garantie) and liability for culpably caused personal injury (Verletzung von Leben, Körper, Gesundheit).

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16 TERM AND TERMINATION

16.1 Term of Agreement.

This Agreement commences on the date You accept it and continues until all subscriptions granted in accordance with this Agreement have expired or been terminated. If You elect to use the Services for a free trial period and do not purchase a subscription before the end of that period, this Agreement will terminate at the end of the free trial period.

16.2 Term of Purchased Subscriptions.

Subscriptions purchased by You commence on the date of the start date specified in the applicable Order Form and continue for the subscription term identified on the order. All Purchased subscriptions shall automatically renew for additional periods equal to the expiring subscription term, unless either party gives the other notice of termination as follows:

For monthly subscription terms: at least twenty days before the end of the relevant subscription term. The per-unit pricing during any such renewal term is subject to change.

For all other subscription terms: at least thirty days before the end of the relevant subscription term. The per-unit pricing during any such renewal term is subject to change.

16.3 Force Majeure.

We may terminate this Agreement and We shall not be liable for any performance failure, delay in performance, or lost data under this Agreement (other than for delay in the payment of money due and payable hereunder) to the extent said failures or delays are proximately caused by (a) natural weather events, (b) war; or (c) any other causes beyond Our reasonable control, including, without limitation, suspension by Salesforce, failure of suppliers, subcontractors, and carriers to substantially meet its performance obligations under this Agreement ("Termination for Cause by Us"). In any such event, We shall give You prompt written notice of termination or suspension of this Agreement, with full details following the occurrence of the cause relied upon.

17 Who are you contracting with, notices governing law and jurisdiction, feature requests

Any notice or other communication provided for herein or given hereunder to a party hereto shall be in writing and shall be given in person, by overnight courier, or by mail (registered or certified mail, postage prepaid, return-receipt requested) to:

DEFACTO GmbH
Am Pestalozziring 1-2
91058 Erlangen

DEFACTO

LOYALTY ENGINE

In case of feature requests, please contact us via info@DEFACTO.de, your personal sales representative or your implementation partner.

18 Miscellaneous

18.1 Governing Law

This Agreement and the Order Forms are subject to the law of the Federal Republic of Germany. The application of the UN Convention on Contracts for the International Sale of Goods (CISG) is excluded.

18.2 Jurisdiction

Erlangen is the place of jurisdiction for all disputes arising directly or indirectly from this Agreement and the Order Forms.

18.3 Salvatory clause

Should individual provisions of this Agreement or the Order Forms be or become ineffective or impracticable, this will not affect the effectiveness of the other provisions of Agreement or the Order Forms. The ineffective or impracticable provision will be replaced by a regulation that comes as close as possible to the economic purpose of the ineffective or impracticable provision. The same applies in the event that the contracting parties subsequently establish that there are gaps in the Agreement or an Order Form.