

Enclosure AGBN

General conditions for the provision and use of data, services and products of the Bundesamt für Kartographie und Geodäsie (Federal Agency for Cartography and Geodesy)

(General terms and conditions of business and use - AGBN)

1. Scope of the Agreement

- 1.1 Deliveries and services provided by the Bundesamt für Kartographie und Geodäsie (hereinafter: Licensor) well as use of spatial base information (hereinafter: data), spatial base services (hereinafter: services) and other products of the Licensor are effected on the basis of the conditions specified below in their version valid at the time of delivery, provision and use, respectively. Any diverging regulations shall only be valid if they have been agreed upon in writing between the Licensor and the user (hereinafter: Licensee). Any general terms and conditions of business on the side of the Licensee are not recognized by the Licensor.

2. Legal hints

- 2.1 The Licensor possesses all rights to the data, services and other products provided by him, in particular he holds the copyrights of the cartographic works, the orthophotos and the rights of a database producer in accordance with the Copyright Act (UrhG). Furthermore, the data, services and other products are subject to the provisions of the Law on state survey and cadastre. Any use of the data, services and other products by way of adaptation, reproduction, digitisation, dissemination, publication, presentation over the internet, or in any other way exceeding the conditions specified hereinafter is only permitted with the prior written consent of the Licensor. Infringements shall in accordance with the states' laws on surveying and cadastre be threatened by a monetary fine or, according to §§ 106 UrhG, by punishment.
- 2.2 The Licensor possesses all rights to provide further data, services and products supplied by him by the order of third parties. The Licensor exempts the Licensee from any claims for damages by third parties concerning the rights to the data provided.

3. Conclusion of contract

- 3.1 A contract between the Licensee and the Licensor is brought about only through the conclusion of a written licence Agreement, written or electronic order confirmation by the Licensor, or fulfilment of an order by the Licensor.

4. Revocation right

- 4.1 If the Licensee is a customer he is according to § 312d German Civil Code (BGB) entitled in the case of distance contracts to a right of revocation. A customer is any natural person placing an order for a purpose that can be attributed neither to its commercial nor to its other independent professional activities. The customer may revoke his order within two weeks either in text form or by returning any delivered product without giving the reasons. To observe the time limit, dispatch to the Bundesamt für Kartographie und Geodäsie, Richard-Strauss-Allee 11, 60598 Frankfurt am Main in due time of the product will be sufficient. The revocation right does not exist with respect to the delivery of goods produced according to customer specifications (e.g. printouts, plots or data provided according to customer requirements) neither for the delivery of audio or video recordings or of software, insofar the data carriers supplied. The right of revocation does not apply to the delivery of goods produced to customer specifications (e.g. printouts, plots or data provided according to customer specifications), nor to the delivery of audio and video recordings or software if the delivered data carriers have been unsealed by the customer. Concerning the supply of services the revocation right expires if the Licensor has started execution of the relevant service, with the customer's express consent, before expiration of the revocation period or in case the customer himself has taken action.
- 4.2 In case of an effective revocation the customer is obliged to return the consignment. Up to an order value of EUR 40,00 the forwarding charges shall be borne by the customer.

5. Shipment and data transmission

- 5.1 Shipment of analog products is effected for the account and risk of the orderer. If the orderer is a consumer, the risk of accidental perishing and the random impairment is transferred to the orderer at the date of delivery of the purchased analog products.
- 5.2 Ownership of the products remains with the Licensor until full payment has been made.
- 5.3 The orderer is obliged to check shipments for completeness immediately on receipt. Incorrect or incomplete shipments or any other obvious defects must be complained within two weeks on receipt. Data must be checked within three months on receipt. Latent defects must be complained immediately after detection within one year on receipt of shipment. Complaints will be considered only within these periods.
- 5.4 If the orderer is a customer he must complain any possible defects within two years on receipt of shipment. In the event of timely and reasonable notice he is entitled to the relevant legal rights. However, he can only claim damages if he has given notice of the defect within one year on receipt of shipment.
- The Licensor is entitled to delivery in instalments.

6. Internal use

- 6.1 The Licensee is granted the non-exclusive and, with the exception of No. 8.1, inalienable right to use the data for internal purposes, services, and other products provided by the Licensor. This includes also putting of the data on a local network of the Licensee for the number of workstations agreed upon and the reproduction for internal usage.
- 6.2 If the use of the data, services and other products is restricted to a certain number of workstations an extended licence must be obtained if increased usage of the data etc. is made. As workstation is considered any technical unit at which the data (also in reprocessed form) and other products are used by the Licensee.
- 6.3 The Licensee shall take appropriate measures to ensure that no third parties can have access to the data, services and other products, and that the employees of the Licensee can neither use them for their personal purpose nor make them accessible to third parties. The Licensee must inform the Licensor about the measures taken on request.

7. Exposition, distribution and making available for the public

- 7.1 The Licensee may present the data – except for personal data – at fairs etc. in which he takes part as an exhibitor or organiser.
- 7.2 The Licensee may publish – except for personal data – one extract of the data on the internet in the form of raster data, if access to the internet site is possible free of charge, the data per web site (internet domain) do not exceed a volume of 1 Mio pixel and an indication of source acc. to No. 7.3 is given as a link to the internet site of the Licensor. This does not apply to web mapping services or representations similar to these.
- 7.3 The Licensee is obliged to apply a clearly visible note indicating the source material used with each publication or presentation of the data to third parties, which shall be laid out as follows:
- 7.4 Geobasisdaten © Bundesamt für Kartographie und Geodäsie (www.bkg.bund.de)

8. Entrustment of a contractor

- 8.1 The distribution of products and data to a contractor of the Licensee is admissible insofar and to the extent that this is required for the needs of internal use.
- 8.2 In the case of distribution of products and data to a contractor the Licensee must bind the latter in writing to comply to use the data adopted exclusively for the processing of the relevant order, not to make such data in no case available to any third parties as well as to delete any data, intermediary products, working copies remaining with him after fulfilment of order.
- 8.3 If the Licensee charges a contractor with the setup, installation or maintenance of his own services, that access the services of the Licensor, the Licensor must be informed about the name and seat of the contractor. In this case the latter is given special access to the Licensor's service through his IP or, if necessary, access data of his own. The regulation in No. 8.2 applies accordingly.

9. Charges

- 9.1 The provision and use of the products, data and services is subject to charges, unless specified otherwise. The amount of the charges is assessed according to the AdV guideline on charges in the respectively valid version at the time of data distribution or use of services. The Licensor informs the Licensee of any changes of the relevant provisions three months before they become effective for the first time at the latest. In the case of an increase of the charges by more than 2 % the Licensee is entitled to a special right of termination.
- 9.2 The billed amount becomes due upon receipt of the invoice. If no other term is indicated in the invoice, it must be settled within 14 days after receipt without any deduction.

10. Warranty, liability

- 10.1 The Licensor provides the data, services and other products with the care as is required for the fulfilment of his public duties. However, the Licensor takes no warranty that the products are free from any defects, that the data are correct and complete, nor that the services will be available on a permanent basis. The Federal Republic of Germany will be responsible for property damages and financial losses occurring through the use of the data, services and other products, and the non-productive time of the services, respectively, only if caused by wilfulness or recklessness or by negligent violation of substantial contractual obligations by a legal representative or vicarious agent of the Federal Republic of Germany.
- 10.2 The Licensee is responsible to the Licensor for the damages resulting from any infringements against these terms and conditions of use, in particular in the case of usage or distribution of data or access identifications to services by the Licensee or his employees contrary to the terms of the Agreement.

11. Storage of customer data

- 11.1 The Licensee's contact data may be stored electronically by the Licensor and processed in accordance with the Data Protection Act of the Federal Government. To the teleservices sector applies the teleservices data protection law.

12. Final provisions

- 12.1 In case that any term of these General Terms and Conditions of business and use (AGNB) should be or cease to be effective, the validity of the AGNB shall not be affected in other respects.

12.2 Venue for legal disputes arising from the use of the data and services shall be Frankfurt am Main, Germany, if the contractors are merchants, corporate bodies under public law or separate public fund assets, or if at least one of the contractors has no domestic place of general jurisdiction, the applicable law shall be the law of the Federal Republic of Germany.

