# General Terms and Conditions – Certification

**for INSIGMA IT Engineering GmbH as of 01/01/2018**

## Preamble

INSIGMA IT Engineering GmbH (hereinafter referred to as "INSIGMA" or "we") is pleased that you (hereinafter referred to as the "customer", "DMS provider" or "you") as a provider of a Dealer Management System (hereinafter referred to as "DMS") are making use of our certification services for the "certification" of the technical "interfaces" in your DMS. You are deploying your DMS with your customers ("dealers") who exchange data with one of the dealer's contractual partners ("manufacturers/OEM") via your DMS. We check the interfaces for connecting your DMS to the IT systems of the manufacturer. A customer portal provided by us is used for the processing. Our services are paid through "Support Units", which can be purchased according to the price list.

## § 1 Scope of Application

1. These General Terms and Conditions for Certification – hereinafter referred to in short as "T&Cs for Certifications" – apply to the contractual legal relationships in the area of interface certification between us, INSIGMA, and you, the DMS provider.
2. The certification or attestation of interfaces is one of the necessary prerequisites for obtaining permission from the manufacturer to exchange data via an interface provided by the manufacturer himself. The certification is evidence that your DMS system is able to process or deliver data in sufficient quality for the manufacturer.
3. Confirmation of successful certification in the form of a certificate or a written confirmation, if applicable, is provided by the manufacturer.
4. Conflicting services and provisions that go beyond the terms of the contract will not become part of the contract, even if such are not expressly contradicted.

## § 2 Offer, Acceptance, Delivery Times

1. Offers from us are non-binding. An order confirmation will be sent to you by way of a pro forma invoice. Information about the expected duration of the certification is based on estimates of the scope of the work on the basis of your information. They are only binding if they are expressly confirmed as binding.
2. In the event that binding deadlines or time limits are not met, the customer must set us an additional deadline of at least two weeks with the declaration that it will withdraw from the contract after the expiry of the deadline or terminate it.

## § 3 Documents

1. The binding basis are the documents provided by the manufacturer (interface documentation), over which we have no influence.
2. The basis of the certification are also the documents or data (documents) provided by you. In particular, you undertake to provide the documents required for carrying out the certification procedure completely, free of charge and on time. You also will ensure that all information contained in your documents is complete and true.

## § 4 Obligations of INSIGMA, Confidentiality

1. At the time of placing the order, we guarantee that we have the approval to perform the certification for the manufacturer.
2. Should we lose this approval, we will inform you immediately. We will also reimburse you for the Support Units that have so far not been used. There will be no refund for Support Units used up to this time.
3. As soon as we are informed by the manufacturer that an interface will no longer be supported now or in the future on the part of the manufacturer or further certifications should no longer be made, we will inform you about this immediately and agree upon, together, how to further proceed. Expenses for finding a solution between you, the manufacturer and us are chargeable. All services provided up to this point in time must be remunerated. Support Units already used will not be refunded.
4. We undertake to treat all information made available through the customer with strict confidentiality and to use such only within the context of the activity agreed with the customer and for our own sales purposes as well as only to pass such on to third parties, if this is absolutely necessary in connection with

the service specifically commissioned in each case. Confidentiality applies throughout the contract period and also after termination.

5. You can access our privacy policy at any time at www.insigma.de/en/privacy-policy.

## § 5 Obligations of the Customer

1. The customer bears any costs for additional expenses resulting from improper or non-existent cooperation. This includes particular work that must be repeated or delayed for the aforementioned reason.
2. The customer is obliged to notify us immediately of any significant changes that may impact the fulfillment of the certification. If changes are made in your DMS, a new certification may be required. This will be charged separately.

## § 6 Additional Services

1. Training or workshops may be offered in connection with the certification. The cost for these training sessions or workshops will be calculated separately.
2. Chargeable requests may be submitted to us by means of a ticket system. Furthermore, there may be an opportunity to clarify questions by means of a forum provided by us. We reserve the right not to publish all questions and are not liable for the accuracy of the answers given therein.

## § 7 Training or Workshops

1. Basic training is mandatory on the part of the manufacturer. In exceptional cases, this obligation can be omitted. The customer is not entitled to a specific instructor. The instructor is not bound by any firm instructions with regards to the implementation of the training. If the instructor is unavailable, we will find a new date by mutual agreement. All training is prepared and carried out with the utmost care. A certain training success is not guaranteed.
2. Other matters govern our general terms and conditions with regards to training.

## § 8 Payment

1. The prices for the certification as well as the workshops are fixed prices, which can be viewed after registration in the customer portal. The payment for support requests is made with service units, which the customer can purchase from us. Prices for Support Units can be found in the current price list.
2. Payment is due no later than the date stated on the invoice. If payment terms are exceeded, default interest according to § 288(2) of the German Civil Code (BGB) and a lump sum according to § 288(5) of the BGB will be charged.
3. The service units expire within two years from the date of purchase.
4. Additional expenses, for which we are not responsible, will be charged separately at the respective chargeable rates.
5. Rights of retention of the customer are excluded.
6. Invoice amounts are net amounts. In addition, in each case, the customer will pay the value added tax applicable at the time of the invoice at the respective amount.
7. We are entitled to commission third parties with invoicing and collection. The invoice may also be transmitted electronically.

## § 9 Contract Duration, Termination

1. The contractual relationship ends with expiry of the service rendered by us.
2. If the customer does not provide the necessary cooperation or if change requests require additional work not included in the price calculation, the additional costs of which are not borne by the customer, we will be entitled to terminate the contract without giving notice. The previous services provided are still to be paid.

## § 10 Copyright

We retain the copyright to the services provided by us, as long as they are copyrighted. In particular, the customer may only use the working papers, documents and other aids made available to it within the scope of the order for the purpose according to the agreement. Copying and duplication requires our consent.

## § 11 Customer Portal

We provide a web portal for the exchange of data and for automated processes as part of the certification. The customer undertakes to treat personal access data confidentially and not to make such accessible to unauthorised third parties. We cannot accept any liability for misused access data, unless we are responsible for the misuse. Further information on the use of the customer portal can be found in the Cloud-T&Cs and in the terms of use of our web offerings.

## § 12 Warranty

1. We do not guarantee the compatibility of the interfaces. Our certification also does not guarantee error-free operation of data exchange between your DMS system and the manufacturer's system. We are not liable for any resulting damages. You will notify us immediately in writing of any defects that arise, including a detailed description of the problem and the information required to correct the problem.
2. With regards to claims for defects, the inspection and complaint obligations pursuant to Art. § 377 BGB shall apply. Accordingly, the customer must examine the service immediately upon receipt and, if a defect becomes apparent, report it to us immediately. If the customer fails to do so, the service shall be deemed to be approved. If the defect appears at a later date, then the customer must report the defect in writing immediately, otherwise it shall be deemed to be approved.
3. In the event of substantial defects proven by the customer, we shall provide subsequent remedial action by either providing a new, defect-free service for the customer or eliminating the defect at our discretion. The elimination of the defect may also consist of demonstrating to the customer reasonable possibilities to prevent the occurrence of the defect in the future.
4. If the subsequent remedial action finally fails, the customer may demand a decrease in payment (reduction) or withdraw from the contract. Compensation is paid only within the limits specified in § 13.
5. The warranty claims are subject to a limitation period of one year following service provision, with the exception for malice or deceit.
6. We do not guarantee that the manufacturer will grant approval for data exchange after certification.
7. We assume no warranty for the usage period of the interface. Nor do we give any warranty as to when the manufacturer will issue a new interface definition or structure or require data exchange. This concerns interfaces that have already been certified and interfaces that are currently in the process of certification. As part of our obligations under § 4, we will look for solutions if necessary.

## § 13 Liability

1. We do not provide compensation for damage or claims caused by insufficient cooperation. We are also not liable for the non-acceptance of the certification by the manufacturer, dealer or third party or for claims for damages due to unfulfilled expectations.
2. We are not liable if the customer portal is temporarily unavailable. Our cloud terms and conditions and terms of use apply to our web offerings.
3. We assume no liability for deadlines and time periods set by the manufacturer or other third parties or not complied therewith, as long as we have no significant influence thereon.
4. We would like to point out that there may be differences between the written certification templates provided to us by the creator/operator of the interface and their actual implementation, which, even if properly implemented by the customer, may lead to errors in productive deployment. Certification by us also does not guarantee faultless operation. We are not liable for any resulting damages.
5. With regards to claims for damages, irrespective of their legal basis, or claims due to futile expenditure, a limitation period of two years shall apply from the time at which the customer becomes aware of the damage. However, these claims for damages lapse after three years, at the latest, from the date of the occurrence of the damage. The deviating limitation period with regards to material defects and defects of title (§ 12) shall remain unaffected and shall expire one year after provision of the service, unless the defect has been fraudulently concealed or intentionally caused.
6. The above limitation of liability does not apply to damage in the case of intent and gross negligence, injury to life, limb or health, in the case of liability without fault, for example, under the German Product Liability Act, in the case of fraudulently concealed errors or insofar as we have assumed a guarantee.
7. The limitation of liability also applies to third parties that are included in the scope of protection of the contractual relationship as well as to the legal representatives, employees, staff or other vicarious agents or subcontractors.
8. In addition, liability is excluded.

## § 14 Concluding Provisions

1. The place of jurisdiction for all disputes in connection with this contract is Cologne, provided that the customer is a merchant, a legal entity under public law or a special fund under public law. Any exclusive place of jurisdiction remains unaffected thereby.
2. Any contradictions between the provisions governing the contractual relationship are to be resolved according to the following order of precedence, whereby the first-mentioned provisions take precedence over those subsequent:
   a. Agreements in the service certificate/individual contract
   b. Special product-related conditions for the respective product
   c. These General Terms and Conditions – Certifications
   d. The General Terms and Conditions of INSIGMA
3. German law shall apply exclusively to the exclusion of the UN Convention on Contracts for the International Sale of Goods and international private law.
4. Should any provision of these T&Cs for Certifications be invalid in whole or in part, this shall not affect the validity of the remaining provisions.
5. The customer shall be notified of any changes to the underlying T&Cs, the service description or the price lists by means of the customer portal or in text form. These T&Cs for Certifications in the latest version shall apply to future services.
6. The customer cannot transfer rights and obligations under this contract to third parties.
7. If there are any doubts about the interpretation of these T&Cs for Certifications, the German version is authoritative.