

# Terms of Use for the Hellmann Portal and the Applications and Modules provided via the Portal

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Additional Special Terms of Use may be communicated upon registration or use of the affected functions, applications or modules.

**Effective: November 30, 2018**

# General Terms of Use for the Hellmann Portal

The following General Terms of Use apply from December 01, 2018.

## I. Scope

I.1. Hellmann Worldwide Logistics SE & Co. KG (“**Hellmann**”) offers its own customers and contractors for deliveries and services to Hellmann and customers and contractors of companies affiliated with Hellmann the opportunity to use an IT access (“**portal**”) set up by Hellmann at [portal.hellmann.com](http://portal.hellmann.com).

I.2. In the following, customers as well as contractors, suppliers etc. are uniformly referred to as “**business partners**”. The portal is only available to business partners who use it in the exercise of their commercial or self-employed professional activity and are thus entrepreneurs within the meaning of § 14 BGB (German Civil Code). The portal is not available to consumers.

I.3. The scope of the business partner's right of use as well as the mutual rights and obligations for the portal are defined in the following Terms of Use.

I.4. These General Terms of Use apply to the use of the portal. For individual functions, applications – including applications for client systems or mobile devices – and modules (hereinafter uniformly referred to as “**functions**”), additional Special Terms of Use may apply which take precedence as more specific provisions over these General Terms of Use.

I.5. The execution of transport contracts and logistical or other (additional) services shall continue to be governed by the (general) conditions applicable to these or by individual agreements as well as by Special Terms of Use for individual functions and shall not be affected by these General Terms of Use.

I.6. Deviating terms and conditions of the business partner shall not apply. This shall also apply if Hellmann performs the service without reservation despite being aware of deviating conditions.

I.7. The portal is also used internally by Hellmann employees and those of affiliated companies. These are not governed by these Terms of Use, but by employment contract provisions, internal company guidelines (such as the End User Policy) and any relevant company agreements, where applicable.

I.8. If, at the time of an action by Hellmann pursuant to Sections II.10. (Disabling of credentials), VI. (Costs), VII. (Termination) or IX. (Amendments to these General Terms of Use), services between the business partner and companies affiliated with Hellmann are processed via the portal, Hellmann shall only implement the measure in agreement with the affiliated companies.

## II. Description of the Portal, Users

II.1. The portal offers business partners the opportunity to use various functions to carry out business relationships with Hellmann and companies affiliated with Hellmann.

II.2. Hellmann provides the portal with an annual average availability of 98%. This does not apply to maintenance times, provided that the cumulative maintenance times do not exceed 48 hours per year and are announced at least one week in advance.

II.3. If non-availability of the portal or a function is due to intent or gross negligence on the part of Hellmann or a vicarious agent of Hellmann, Hellmann shall not be entitled to rely on compliance with the availability promise in accordance with Section II.2.

II.4. Hellmann shall not be responsible for falling short of the availability promise in accordance with Section II.2., if the unavailability is due to force majeure, to technical disruptions at third parties who are not vicarious agents of Hellmann, or to an illegal attack on Hellmann.

II.5. The business partner is entitled to use the portal exclusively for his own purposes within the scope of business activities with Hellmann and affiliated companies. Any further, independent, economic use of the portal is prohibited. This applies in particular to any further remunerated transfer of the portal by the business partner to third parties.

II.6. The business partner may designate one or more persons for whom access to the portal is granted (“**users**”). These are typically employees of the business partner.

II.7. Users register for the portal using the input mask provided or are created centrally by Hellmann according to the instructions of the business partner. Hellmann will assign each user to an existing business partner or create a new business partner, e.g. in the context of the first placing of an order by such a user.

II.8. A user ID and password (“**credentials**”) are defined for each user. The business partner must ensure that the users assigned to him change the password to a password known only to the respective user and change it regularly.

II.9. The business partner undertakes to treat credentials as strictly confidential and not to pass them on to third parties and will obligate users assigned to him accordingly.

II.10. Hellmann may “**disable**” users' credentials, i.e. either no longer allow them to log in or permanently remove accesses and associated settings and data, if

- the business partner wishes this for one or more of its users,
- a user wishes this for his own credentials,
- a user cannot be assigned to a business partner,
- there are indications that credentials are used unauthorized or improperly,
- the security of the portal or other systems may otherwise be compromised,
- users do not use their access for more than 180 days, or

- there are indications that these General Terms of Use, Special Terms of Use or individual terms have been violated.

II.11. The business partner can assign individual authorizations for the users within the portal or by notifying Hellmann. In particular, a user can be appointed “**administrator**” who can also make settings for other users of the business partner or the business partner as a whole and takes note of information about the portal.

II.12. The business partner shall name the users to whom credentials are to be made available to Hellmann.

II.13. If a named user leaves the services of the business partner or is no longer to use the portal for other reasons, the business partner is obliged to notify Hellmann immediately, unless the business partner has the option of disabling the user's credentials himself.

II.14. In individual cases, Hellmann is free to set up credentials at the request of the business partner that cannot be assigned to a specific natural person (“**no name account**”).

II.15. If a person with knowledge of credentials of a no name account leaves the services of the business partner or is no longer to use the portal for other reasons, it is the sole responsibility of the business partner to take measures to prevent the (continued) misuse and, in this context, to give Hellmann appropriate instructions if necessary.

II.16. The business partner deposits exactly one current e-mail address and ensures that this and the e-mail addresses assigned to the user's credentials are up-to-date and adequately protected against unauthorized access, and that information about the portal transmitted by Hellmann is noted. If no such address is provided, Hellmann will transmit information about the portal to the administrator.

II.17. The business partner is obliged to ensure that Hellmann is informed immediately if there is a possibility that third parties have obtained unauthorized access to the credentials of the business partners or users. If the business partner or its users lose access to the contact data specified in the portal or if these are no longer to be used for the portal for other reasons, the business partner is obliged to ensure that the stored contact data is updated.

II.18. The portal is – also in the case of no name accounts – designed for operation by natural persons. It requires the express permission of Hellmann in written or text form to use screen scraping, web harvesting or similar techniques to enable (partially) automated operation or to make functions accessible in a way other than that intended by Hellmann. The business partner undertakes not to use the portal in a way that impairs, slows down or restricts the security or performance of the portal.

### III. Confidentiality

III.1. The business partner undertakes not to use confidential information of which he gains knowledge through the use of the portal for purposes other than cooperation with Hellmann or

companies affiliated with Hellmann or to pass it on to third parties without the permission of Hellmann. Confidential information is all information of which the business partner gains knowledge as a result of using the portal, in particular portal functions, source codes, software, business plans, freight rates or available quotas.

III.2. Third parties shall not be employees of the business partner or its advisors if they are bound to secrecy by contract or by law.

III.3. This does not apply to such information that was demonstrably known to the business partner or user before the portal access was set up or became known to the public at the time of the start of use of the portal or at a later time without the business partner's fault.

III.4. The obligation to maintain confidentiality shall apply for a period of five years after termination of the business relationship.

III.5. The business partner undertakes to commit the users assigned to him to confidentiality in accordance with the above paragraphs 1 to 4.

#### **IV. Responsibility for Content**

IV.1. The business partner undertakes not to upload any content to the portal, either himself or through his users, or through the use of third-party content, which violates a statutory prohibition or infringes the rights of third parties.

IV.2. The business partner has to take appropriate precautions against the loss of his contents in the portal or the individual functions.

IV.3. Unless expressly agreed otherwise, Hellmann is not obliged to take measures to secure the data entered into the portal by business partners or users.

#### **V. IT and Information Security**

V.1. The business partner undertakes to ensure that data transferred to the portal is free of malware. The business partner shall supervise and train the users assigned to him accordingly.

V.2. Hellmann does not inspect the data transmitted by users to the portal and accepts no responsibility for the content and accuracy of the data.

V.3. Hellmann logs the use of the portal for a limited time in accordance with Hellmann's [privacy statement](#). The logging serves exclusively to maintain the technical security, the problem and error analysis as well as the proof of the commissioning or details of services to be provided by Hellmann.

V.4. Information which is not related to a service to be rendered by Hellmann but which exclusively states something about the performance or the behavior of users will not be provided to the business partner or third parties, not even in the case of no name accounts, unless there are statutory obligations to provide information.

## VI. Costs

Hellmann reserves the right to offer the use of the portal or individual functions in the future exclusively for a fee.

## VII. Termination

VII.1. The business partner may terminate the use of the portal and its functions at any time without notice, unless a notice period for termination has been agreed by deviating agreements.

VII.2. Hellmann is entitled to terminate the use of the portal and its functions by the business partner with one month's notice to the end of the month, unless another period has been agreed by deviating agreements.

VII.3. The right to termination without notice for good cause shall remain unaffected for both parties.

VII.4. Notices of termination must be given in written form or text form.

VII.5. After the termination takes effect, the credentials for users of the business partner will be disabled by Hellmann.

## VIII. Liability by Hellmann

VIII.1. Hellmann has unlimited liability

- in case of intent or gross negligence,
- for injury to life, limb or health,
- in accordance with the provisions of the Produkthaftungsgesetz (Product Liability Act) and
- to the extent of a warranty assumed by Hellmann.

VIII.2. Hellmann shall only be liable for slight negligence if an obligation is breached, which fulfilment is essential for the proper performance of the contract and the breach endangers the achievement of the purpose of the contract and the business partner regularly relies on the observance. However, Hellmann shall not be liable for unforeseeable damages that are not typical for the contract.

VIII.3. The liability for the restoration of data of the business partner shall be limited to the amount of the costs necessary to restore the data if they are regularly backed up in an appropriate manner or can otherwise be reconstructed from machine-readable data material with reasonable effort.

VIII.4. Hellmann does not accept any further liability.

VIII.5. The above limitation of liability also applies to the personal liability of Hellmann employees, representatives and organs.

VIII.6. The business partner shall indemnify Hellmann against all claims for payment asserted against Hellmann due to an infringement of rights by the contents posted on the portal by the business partner or due to the use of the portal by the business partner. Upon first request, the business partner shall assume all reasonable costs incurred by Hellmann as a result thereof, in particular the necessary costs of legal defense. This does not apply if the business partner is not responsible for the infringement.

## **IX. Amendments to these General Terms of Use**

IX.1. Hellmann is entitled to amend these General Terms of Use with the consent of the business partner.

IX.2. Consent shall be deemed given if the business partner does not object to the amendment within six weeks of receipt of an amendment notification, provided that the amendment notification contains a reference to this legal consequence.

## **X. Applicable Law and Place of Jurisdiction**

X.1. German law applies.

X.2. The place of jurisdiction shall be Osnabrueck, unless another place of jurisdiction is mandatory by law. The competent court shall in any case be the regional court, irrespective of the amount in dispute. The chamber for commercial matters has functional jurisdiction.

# Special Terms of Use for the Module “Addresses”

## Agreement on processing in accordance with Article 28 General Data Protection Regulation (GDPR)

between the  
Business Partner using the portal as Controller (“Client”)  
and  
Hellmann as Processor (“Supplier”)

The following Special Terms of Use for the Module “Addresses” (“Special Terms of Use”) apply from May 26, 2018.

### A. Subject Matter and Duration of the Agreement

A.1. The subject of these Terms of Use is the provision of the module “Addresses” by Hellmann within the portal. The General Terms of Use of the portal apply, which are supplemented by these Special Terms of Use. These Terms of Use do not apply to the possible access of a Hellmann application to contacts stored only locally in the executing client system or mobile device.

A.2. The duration of this Agreement on order processing corresponds to the period of use of the portal if one or more addresses containing personal data are stored in the module “Addresses”.

### B. Specification of the Agreement Details

B.1. The module “Addresses” saves cross-functional address data in the portal in order to save the business partner and his users repeated entries and avoid transmission errors. The module is available for all users of the business partner who have been granted access to a function using the module (e.g. order entry) with the identical database of the business partner. The module can be called from the functions using it or can be operated context-related, e.g. by saving an address as a template from entered orders or by automatically completing addresses during entry. Further support services can be agreed between the business partner and Hellmann or can be provided within the scope of the right of instruction according to item K of these Terms of Use, e.g. mass import of electronically transmitted address data from the business partner. Employees and agents working on Hellmann's behalf can access the entries in the module if this is necessary to enter (phone) orders of the business partner in accordance with instructions.

After a data set has been transferred to a function inside or outside the portal, further processing of this data set depends on the conditions for this function. Further processing may

no longer represent data processing in accordance with Article 28 GDPR, for example, as part of fulfilling logistic services.

The undertaking of the contractually agreed Processing of Data shall generally be carried out within a Member State of the European Union (EU) or within a Member State of the European Economic Area (EEA).

Each and every Transfer of Data to a State which is not a Member State of either the EU or the EEA requires

- the prior notice of the Client by the Supplier,
- the Client not terminating the usage of the module "Addresses" or objecting the transfer before data are transferred and
- meeting the specific conditions of Article 44 et seq. GDPR, especially implementing the Standard Data Protection Clauses of the EU.

B.2. The subject matter of the processing of personal data comprises personal master data (key personal data) as well as communication data in the sense of contact information (e.g. addresses, phone numbers or e-mail addresses).

B.3. The categories of data subjects include the addresses stored by the business partner in the module "Addresses", including contact persons ("on hand") and – regularly personalized – contact data (phone extensions, e-mail addresses) for coordinating or announcing deliveries. Personal data are affected in the case of private addresses, but also in the case of company addresses by the indication of natural persons as contact persons with individual contact data.

B.4. Within the scope of this Agreement, the Client shall be responsible for compliance with the applicable statutory requirements on data protection, including, but not limited to, the lawfulness of disclosing Data to the Supplier and the lawfulness of having Data processed on behalf of the Client ('Controller' in accordance with Article 4 no. 7 GDPR). The processing of addresses is not limited on the part of the Supplier to such addresses, which are in connection with a transport service performed or commissioned.

## **C. Technical and Organizational Measures**

C.1. The Supplier shall establish the security in accordance with Article 28 Paragraph 3 Point c, and Article 32 GDPR in particular in conjunction with Article 5 Paragraph 1, and Paragraph 2 GDPR. The measures to be taken are measures of data security and measures that guarantee a protection level appropriate to the risk concerning confidentiality, integrity, availability and resilience of the systems. The state of the art, implementation costs, the nature, scope and purposes of processing as well as the probability of occurrence and the severity of the risk to the rights and freedoms of natural persons within the meaning of Article 32 Paragraph 1 GDPR must be taken into account. Details can be found in the most current version of the Supplier's Data Protection Concept.

C.2. The Technical and Organizational Measures are subject to technical progress and further development. The Supplier warrants to fulfil its obligations under Article 32 Paragraph 1 Point d

GDPR to implement a process for regularly testing, assessing and evaluating the effectiveness of Technical and Organizational Measures for ensuring the security of the processing. In this respect, it is permissible for the Supplier to implement alternative adequate measures. In doing so, the security level of the defined measures must not be reduced. Substantial changes must be documented via a change of the Data Protection Concept.

## **D. Right of Access, Rectification, Restriction and Erasure of Data**

D.1. The Supplier may not on its own authority grant access to, use for transportation services, rectify, restrict or erase the processing of data that is being processed on behalf of the Client, but only on documented instructions from the Client.

D.2. Insofar as a Data Subject contacts the Supplier directly concerning an access request, rectification, erasure, or restriction of processing, the Supplier will immediately forward the Data Subject's request to the Client, where the Supplier is able to correlate the data subject to the Client, based on the information provided by the data subject. The Supplier shall not be liable in cases where the Client fails to respond to the data subject's request in total, correctly, or in a timely manner.

## **E. Quality Assurance and other Duties of the Supplier**

In addition to complying with the rules set out in this Agreement, the Supplier shall comply with the statutory requirements referred to in Articles 28 to 33 GDPR; accordingly, the Supplier ensures, in particular, compliance with the following requirements:

- a) The Supplier appoints a Data Protection Officer, who performs his/her duties in compliance with Articles 38 and 39 GDPR. The current Data Protection Officer is named in Hellmann's [privacy statement](#) and can always be contacted via [privacy@hellmann.com](mailto:privacy@hellmann.com).
- b) The Supplier entrusts only such employees with the data processing outlined in this Agreement who have been bound to confidentiality in accordance with Article 28 Paragraph 3 Sentence 2 Point b, Articles 29 and 32 Paragraph 4 GDPR and have previously been familiarized with the data protection provisions relevant to their work. The Supplier and any person acting under its authority who has access to personal data, shall not process that data unless on instructions from the Client, which includes the powers granted in this Agreement, unless required to do so by law. All obligations shall survive the termination or expiration of this Agreement.
- c) The Supplier implements and complies with all Technical and Organizational Measures necessary for this Agreement in accordance with Article 28 Paragraph 3 Sentence 2 Point c, Article 32 GDPR. The Client verifies the Technical and Organizational Measures conducted by the Supplier as part of the Client's supervisory powers referred to in Item H of this Agreement.
- d) The Client and the Supplier shall cooperate, on request, with the supervisory authority in performance of its tasks.
- e) The Client shall be informed immediately of any inspections and measures conducted by the supervisory authority, insofar as they relate to this Agreement. This also applies insofar as the Supplier is under investigation or is party to an

investigation by a competent authority in connection with infringements to any Civil or Criminal Law, or Administrative Rule or Regulation regarding the processing of personal data of the Client in connection with the processing of this Agreement.

- f) The Supplier shall periodically monitor the internal processes and the Technical and Organizational Measures to ensure that processing within its area of responsibility is in accordance with the requirements of applicable data protection law and the protection of the rights of the data subject.

## **F. Subcontracting**

F.1. Subcontracting for the purpose of this Agreement is to be understood as meaning services which relate directly to the provision of the principal service. This does not include ancillary services, such as telecommunication services, postal/transport services, maintenance and user support services or the disposal of data carriers, as well as other measures to ensure the confidentiality, availability, integrity and resilience of the hardware and software of data processing equipment. The Supplier shall, however, be obliged to make appropriate and legally binding contractual arrangements and take appropriate inspection measures to ensure the data protection and the data security of the Client's data, even in the case of outsourced ancillary services.

F.2. The Supplier may commission subcontractors (additional contract processors) only after prior explicit consent from the Client, organized as followed:

- a) No subcontractors are currently commissioned.
- b) Outsourcing to subcontractors or changing a later existing subcontractor are permissible when:
  - o the Supplier submits such an outsourcing to a subcontractor to the Client with advance notice,
  - o the Client does not terminate the usage of the module "Addresses" or object the outsourcing before data are transferred and
  - o the subcontracting is based on a contractual agreement in accordance with Article 28 paragraphs 2 to 4 GDPR.

F.3. If the subcontractor provides the agreed service outside the EU/EEA, the Supplier shall ensure compliance with EU Data Protection Regulations by appropriate measures. The same applies if service providers are to be used within the meaning of Paragraph 1 Sentence 2.

F.4. Further outsourcing by the subcontractor requires the express consent of the main Supplier (at the minimum in text form). All contractual provisions in the contract chain shall be communicated to and agreed with each and every additional subcontractor.

## **G. Duties of the Client**

G.1. The Client shall notify the Supplier, without undue delay, and comprehensively, of any defect or irregularity with regard to provisions on data protection detected by the Client in the results of Supplier's work.

G.2. Where a data subject asserts any claims against the Supplier in accordance with Article 82 GDPR, the Client shall support the Supplier in defending against such claims, where possible.

## **H. Supervisory Powers of the Client**

H.1. The Client has the right, after consultation with the Supplier, to carry out inspections or to have them carried out by an auditor to be designated in each individual case. It has the right to convince itself of the compliance with this Agreement by the Supplier in its business operations by means of random checks, during regular business hours, and without interfering with the Supplier's operations. The Supplier may also determine that such audits and inspections are subject to prior notice, the observation of an appropriate notice period, and the execution of a confidentiality undertaking protecting the data of other business partners and the confidentiality of the Technical and Organizational Measures and safeguards implemented. The Supplier shall be entitled to reject auditors which are competitors of the Supplier.

H.2. The Supplier shall ensure that the Client is able to verify compliance with the obligations of the Supplier in accordance with Article 28 GDPR. The Supplier undertakes to give the Client the necessary information on request and, in particular, to demonstrate the execution of the Technical and Organizational Measures.

H.3. Evidence of such measures, which concern not only the specific agreement, is regularly provided by current auditor's certificates, reports or excerpts from reports provided by independent or company bodies (e.g. auditor, Data Protection Officer, IT security department, data privacy auditor, quality auditor), especially via a suitable certification according to ISO/IEC 27001.

H.4. The Supplier may claim remuneration for enabling inspections by the Client or by a data protection supervisory authority respectively another supervisory authority with statutory competence for the Client. The Supplier's time and effort for inspections shall be limited to one day per calendar year, unless agreed upon otherwise. Insofar as there are further contracts between the Client and the Supplier or between associated companies for order processing pursuant to Article 28 GDPR, this quota shall apply cumulatively to all contracts.

## **J. Communication in the Case of Infringements by the Supplier**

J.1. The Supplier shall assist the Client in complying with the obligations concerning the security of personal data, reporting requirements for data breaches, data protection impact assessments and prior consultations, referred to in Articles 32 to 36 of the GDPR. These include:

- a) Ensuring an appropriate level of protection through Technical and Organizational Measures that take into account the circumstances and purposes of the processing as well as the projected probability and severity of a possible infringement of the law as a result of security vulnerabilities and that enable an immediate detection of relevant infringement events.
- b) The obligation to report a personal data breach immediately to the Client and to include at least the following information:

- description of the kind of breach as well as the categories and the estimated number of affected persons and data sets,
  - name and contact details of a person able to provide further information,
  - description of the expected aftermath of the breach and
  - description of implemented counter-measures and further controls to limit the impact of the breach.
- c) The duty to assist the Client with regard to the Client's obligation to provide information to the Data Subject concerned and to immediately provide the Client with all relevant information in this regard, whereby the business partner will primarily use the display and search functions of the module "Addresses" within the portal.

J.2. The Supplier may claim compensation for support services which are not included in the portal services and which are not attributable to failures on the part of the Supplier.

## **K. Authority of the Client to issue Instructions**

K.1. Except where expressly permitted by Article 28 Paragraph 3 Point a GDPR, the Supplier shall process data subjects' data only within the instructions issued by the Client. The Supplier must not process the data for any other reason.

K.2. In particular, the Supplier will not carry out any quality assurance, e.g. address checks or plausibility tests. The databases of different business partners remain completely separate. If a business partner changes an existing data record, this has no effect on data records of other business partners that are identical in content.

K.3. The Client issues instructions via the portal or otherwise in written or text form.

K.4. The Supplier shall inform the Client immediately if he considers that an instruction violates Data Protection Regulations. The Supplier shall then be entitled to suspend the execution of the relevant instructions until the Client confirms or changes them.

## **L. Return and Deletion of Personal Data**

L.1. Copies or duplicates of the data shall never be created without the knowledge of the Client, with the exception of backup copies and test setups as far as they are necessary to ensure orderly data processing, as well as data required to meet regulatory requirements to retain data.

L.2. The Client may at any time have the data records of its addresses deleted in whole or in part by making appropriate entries in the module "Addresses" or by issuing instructions outside the portal. In the event of termination of the portal use by the business partner, the Supplier shall be entitled to delete the entire database in connection with the contractual relationship in accordance with data protection regulations. The Client may request the transfer of the data in electronic form beforehand. The Client shall bear any extra cost caused by deviating requirements in returning or deleting data.

L.3. The Supplier may assume that the Client will no longer use the database if more than one year has elapsed since the last login of a user of the business partner to the portal, calculated from the end of the calendar year in which the last login took place. In this case, the Supplier

shall be entitled to destroy the data stock in accordance with data protection regulations in order to relieve the Supplier of its burden. The Supplier is entitled, but not obliged, to inform the business partner and/or its users of the imminent deletion and to obtain instructions.

## **M. Amendments to these Special Terms of Use**

M.1. Hellmann is entitled to amend these General Terms of Use with the consent of the Client.

M.2. Consent shall be deemed given if the Client does not object to the amendment within six weeks of receipt of an amendment notification, provided that the amendment notification contains a reference to this legal consequence.