

# General Terms and Conditions and Data Protection

General Contractual Terms and Conditions applying to the products of Digitaltools GmbH, with registered office in Schwerzenbach, hereinafter referred to as "digitaltools".

Valid as from 10 March 2021

## 1. Purpose of these contractual terms and conditions

Digitaltools products process and improve car, motorbike, insurance and financing solutions. They are operated by digitaltools.

The products are used by two customer groups (hereinafter jointly referred to as the "Customers"). The first is potential car purchasers (hereinafter referred to as the "Consumers"), who use the cars and offers on the platform, and the second is dealers and agents (hereinafter referred to as the "Sellers"), who advertise, offer and assign the advertised car offers to the Consumers. These contractual terms and conditions apply to both Sellers and Consumers and govern the relationship between digitaltools and Customers.

These contractual terms and conditions between Customers and digitaltools may be supplemented by separate written agreements, which shall take precedence over these contractual terms and conditions.

## 2. Entry into force

These contractual terms and conditions apply to all Customers registered with digitaltools as of 10 March 2021 and to all services digitaltools provides to Customers.

## 3. Legal position of Digitaltools

As operator digitaltools, either itself or via an appointed third party, provides products that Customers can use to create individual contracts. Digitaltools does not act as an agent or in any other representative capacity for Customers.

Customers alone are reciprocally responsible and liable for the content, execution, validity and implementation of service and product delivery agreements that are advertised or offered via the products.

Digitaltools accepts no liability in this respect and provides no services for the processing of contracts agreed via the platform and/or for bringing claims based on those contracts. The settlement of claims arising from a contract made via a product between Customers or between a Customer and a third party is a matter for the Customer and third party alone. The same applies to questions of whether a contract exists and in general to all questions and claims concerning the relationship between Customers or between Customers and third parties.

## 4. Execution of the contract

Customers cannot use the product unless they register with digitaltools. Registration requires acceptance of these contractual terms and conditions. Digitaltools may examine the registration as it sees fit (especially for accuracy and integrity) and may reject the registration without having to provide

a reason. Acceptance of the registration by digitaltools constitutes a contract between the Customer and digitaltools covering the product services governed by these contractual terms and conditions. Customers are not entitled to register or to remain registered.

Digitaltools may at any time ask Customers to produce a version of these contractual terms and conditions that they have duly signed or of a contract based on them, and until such time this is produced may restrict or stop product services.

## **5. Term of the contract and termination**

### *Term of the contract and termination*

Unless otherwise agreed in a written addendum, the basic contract shall apply to Sellers for a fixed 12month period. The contract shall be automatically renewed upon each expiry date for the agreed fixed contract period unless it is terminated, subject to a 30-day notice period, at the end of a contract period. The conditions for the next contract period shall be as stated in the current price list so long as the Customer is informed of the price list at least 45 days before the end of the current contract period. The Digitaltools-FotoApp, where used, provides Customers only with variable costs per car.

Digitaltools may at any time alter the nature, scope, price and terms and channels of purchase of the services it offers, or may refuse to provide services in the event of a default on payment or another breach of contract.

## **6. Obligations on the part of Digitaltools**

Digitaltools operates the products and provides associated services to the best of its ability (telephone support, training, etc.). By using the products, Customers declare, under their own responsibility and in their own names, that they are interested in receiving offers from other Customers within the set advertising period. Customers thus use the products to establish direct exchange relationships. In this regard, digitaltools is only required to make the products available and to forward information via them. Customers are entitled to use the products, in accordance with the terms and conditions, to exchange declarations of intent. Digitaltools shall use up-to-date technical resources to check that the data Customers exchange over the platform is virus-free, but gives no guarantee in this respect.

Digitaltools may, at any time and without having to provide a reason, remove text and pictures from the platforms if they are illegal or contrary to common decency.

## **7. Obligations on the part of Customers**

Customers shall:

- ensure that their profile data on the platforms is always entirely accurate;
- ensure that after third-party processing (e.g. by vehicle exchanges, etc.) with digitaltools products, solutions are accepted. Digitaltools accepts no liability for complaints about vehicles;
- pay the fees for use of the product as per the contract;
- not attempt, either themselves or via authorised third parties, to access (or have accessed) programmes operated by digitaltools;

- take appropriate steps to protect the passwords assigned to them or to users from third-party access, and shall immediately alter the passwords themselves or via digitaltools if there are any grounds for suspecting an unauthorised third-party might have obtained them;
- not use the products in an incorrect manner and, in particular, shall not exchange any illegal or immoral content over them;
- not use electronic messages to send unsolicited messages or information to third parties (e.g. spamming); and
- check data is virus-free before sending it via the platform.

Customers who violate one or more of these obligations shall hold digitaltools entirely harmless against all ensuing consequences. In addition, digitaltools may also terminate the basic contract without notice and claim compensation. All unpaid fees shall immediately fall due. All fees already paid shall lapse without compensation. **8. Terms of payment**

Fees arising from contractual and additional services shall be invoiced after such services have been executed. Individual, payable transactions shall be invoiced following completion. Invoices shall be deemed accepted 7 days after receipt unless written notification is received from the Customer. Fees for subscriptions are payable without deductions within 30 days of the invoice date. Set-up fees must be paid before set-up. Should the Customer default on payment, digitaltools may block access to the products without notice. This shall not release the Customer from their contractual obligations or entitle them to any compensation. In addition to a fee of CHF 10 per reminder, Customers shall also pay 5% interest p.a. on arrears. In the event access is blocked (e.g. for default on payment), the Customer shall be billed a separate CHF 40 processing fee.

## **9. Data protection and security**

### *Confidentiality*

The Customer and digitaltools (including their employees, sub-contractors and auxiliary personnel) undertake to maintain the confidentiality of all documents and information that are not in the public domain and relate to the business of the other contract partner and to which they obtained access during the preparation and implementation of this Agreement. This obligation existed before execution of the contract and shall survive the contract for as long as any interest requiring protection remains. The foregoing is without prejudice to statutory, judicial and administrative disclosure obligations.

### *Data protection*

All data on the platforms and products shall be used by digitaltools to execute the contract. Digitaltools may pass on the data collected to third parties named by the Customer and may use it for direct marketing purposes towards the Customer. The data shall not be used for any other purpose. Digitaltools shall not – with the above exceptions – pass on data to any third party unless required by law or by a court or administrative order. Customers are entitled to inspect the data digitaltools holds on them at any time. They may check and amend their data themselves online.

### *Data security*

Digitaltools shall routinely protect customer data in accordance with good practice. digitaltools shall take all necessary measures to protect the data it stores. Digitaltools and its contractual partners accept no liability for access by third parties to data stored by digitaltools or digitaltools's contract partners.

**10. Customer-specific advertising** digitaltools may show the Customer advertising on the platform. Digitaltools can decide on the advertising it will show to the Customer based on the Customer's data.

### **11. Intellectual property rights**

The content of the services made available by digitaltools is copyright-protected. The use of, and payment for, services by the Customer does not include assignment of intellectual property rights.

### **12. Warranty**

Digitaltools endeavours to offer highly professional services. Digitaltools accepts no liability for the representations and details contained in information and offers. Digitaltools gives no guarantees as to the results being achieved. It warrants only that it will provide the promised services in accordance with all due diligence customary in the sector.

Neither party to the contract shall violate third-party industrial property or other rights while providing their services. Platforms shall essentially be available to Customers 365 days a year, 24 hours per day. On this basis, digitaltools guarantees to provide Customers with at least 90% platform availability. The guaranteed availability may, however, be reduced for maintenance and servicing by digitaltools or its access or hosting provider, provided that Customers have been given timely and advance warning of such a service interruption by email. The guaranteed availability may also be reduced as a result of a failure by a third party to fulfil commitments, or a failure to fulfil them correctly, over which digitaltools has no control. The Customer accepts that no claims can be made against digitaltools for damages suffered as a result of business interruptions or malfunctions attributable to third parties.

### **13. Liability**

Any liability on the part of digitaltools for damages suffered by the Customer as a result of a failure to fulfil contractual obligations, a failure to fulfil them correctly, or a general loss of data, including consequential loss, consequential loss resulting from damage, loss of earnings and third-party claims, is excluded so long as this is legally permitted. Liability for assistants is specifically excluded.

Furthermore, digitaltools accepts no responsibility for advertisements, text or information published on digitaltools's website. In particular, it is not obliged to check the advertisements, text or information for accuracy, quality, legality or availability. Digitaltools cannot be held liable for damages to Customers that is caused by other Customers.

Digitaltools accepts no liability and gives no warranty for its services to Customers where only inadvertent or ordinary negligence is involved. Digitaltools accepts no liability for, and gives no warranty covering, the temporary unavailability of products or failure of individual functionalities. Digitaltools shall only be liable for damages suffered by Customers due to intentional or gross negligence. It accepts no liability for consequential loss or indirect damages.

### **14. Final provisions**

### *Severability*

Should any individual provisions or parts of these contractual terms and conditions prove invalid or unworkable, this shall not affect the validity of the remainder of the contract agreed by the Parties on the basis of these contractual terms and conditions. In such an event, the Parties shall amend the contract to ensure that the purpose of the invalid or unworkable part is achieved as closely as possible.

### *Applicable law and jurisdiction*

The contract agreed by the Parties on the basis of these contractual terms and conditions shall be governed solely by Swiss substantive law. Jurisdiction shall lie solely with the courts for the registered office of digitaltools. Digitaltools may, however, sue Customers in another jurisdiction.