

# Terms of Use

## 1 General information and scope

**1.1** DB Fahrzeuginstandhaltung GmbH, Weilburger Strasse 22, 60326 Frankfurt am Main, Germany (hereinafter referred to as the "Marketplace Operator"), offers an exclusively business-to-business (B2B) marketplace (hereinafter referred to as "railauction.plus" or the "Marketplace") at [www.railauction.plus](http://www.railauction.plus) for selling and purchasing new, used and/or decommissioned goods, objects and materials from the rail sector and for offering and using corresponding services (hereinafter jointly referred to as "Services"). The Marketplace can be used by registered sellers and buyers (hereinafter jointly referred to as "Users").

**1.2** railauction.plus is exclusively available to entrepreneurs within the meaning of Section 14 of the German Civil Code (Bürgerliches Gesetzbuch, "BGB") who have reached the age of majority, legal persons under public law and separate public legal entities that have registered on the Marketplace. Consumers within the meaning of Section 13 BGB and natural persons who have not reached the age of majority are not permitted to use the Marketplace.

**1.3** railauction.plus is only available to Users who have their registered office in a member state of the European Union (this applies to both sellers and buyers). The Marketplace Operator reserves the right to make the Marketplace available at a later date to Users who have their registered office in countries outside the European Union.

**1.4** These Terms of Use comprise the final terms and conditions that apply between the Marketplace Operator and the User for the Services offered by the Marketplace Operator within the framework of operating railauction.plus. These Terms of Use shall apply exclusively. Conflicting terms of use of the User shall not form part of the contract unless the Marketplace Operator has previously expressly agreed to their validity in writing.

**1.5** By registering with railauction.plus pursuant to Section 4, the User accepts these Terms of Use.

**1.6** In addition, the general terms and conditions of the relevant seller shall apply to sales, auctions and services on the Marketplace.

**1.7** Sections 312i (1) (1) to 312i (1) (3) BGB shall not apply.

## 2 Services of the Marketplace Operator

**2.1** railauction.plus is an online B2B sales platform for trading goods and services. The Services of the Marketplace Operator shall include the following activities:

- Making the potential uses of the Marketplace available to approved Users in accordance with Section 4
- Enabling negotiations and the conclusion of contracts on the Marketplace through offers and auctions initiated by the seller pursuant to Section 5 in return for a commission to be paid by the seller to the Marketplace Operator (see Section 8)
- Facilitating communication and information sharing between Users

**2.2** The Marketplace Operator shall not become a party to contracts concluded exclusively between the Users of this Marketplace unless the Marketplace Operator itself is acting as a seller or provider of services via its sales unit DB Resale & Services and this is indicated accordingly in the respective offer on the Marketplace.

**2.3** The Marketplace Operator's DB Resale & Services unit is the central sales unit for the entire Deutsche Bahn AG Group. In carrying out its role, the Marketplace Operator shall, in certain cases, sell goods of the relevant Group company on behalf of the Group company in question via its DB Resale & Services sales unit. In these cases, the Marketplace Operator shall preserve the principle of transparency under the law on representation by disclosing in the relevant offer or auction that it is acting on behalf of a Deutsche Bahn AG Group company and naming the company on whose behalf it is acting. In these cases, only the Group company represented by the Marketplace Operator shall be a party to the contracts concluded.

### **3 Availability**

**3.1** The Marketplace Operator shall endeavour, taking into account its technical and organisational possibilities, to ensure uninterrupted availability of the Marketplace. The Marketplace Operator is obliged to ensure an annual average Marketplace availability of 97.5% for the agreed Services. When determining availability, essential servicing work, downtimes for which the Marketplace Operator is not responsible (in particular, disturbances due to failures and/or malfunctions of technical systems and/or network components outside the Marketplace Operator's sphere of responsibility) as well as downtimes caused by improper use of the Marketplace by Users shall not be taken into account.

### **4 Registering with railauction.plus and creating a seller profile**

**4.1** railauction.plus may be used only after prior registration. No entitlement to registration may be assumed. The Marketplace Operator shall be entitled to refuse Users access to the Marketplace without giving reasons.

**4.2** To register, Users create a User account on the Marketplace. To do this, Users need to enter their contact details and company information, choose a personal password and agree to these Terms of Use. The User then submits a binding request to register with railauction.plus by clicking on the "Create an Account" button. After verification, the User receives a confirmation e-mail with an activation link that must be clicked. Once the User has clicked on the activation link, the Marketplace Operator can accept the registration request and activate the User account. Upon activation, a usage contract governing the use of the Marketplace shall be concluded between the User and the Marketplace Operator.

**4.3** In order to sell or provide services on the Marketplace, Users must create a seller profile in addition to completing the registration procedure described in Section 4.2. To do so, Users need to enter additional data in the User account after completing registration, upload their general terms and conditions and upload or link to a privacy statement. By clicking on the "Save" button, the User submits a binding request to create a seller profile. Upon activation of the seller profile, a usage contract governing the use of the Marketplace as a seller or provider of services is concluded for a fee.

**4.4** Legal entities or partnerships must be registered by a named natural person authorised to represent the entity.

**4.5** To register and create the seller profile, all information requested in the input template must be entered. The information provided must be complete and truthful. The Marketplace Operator reserves the right to verify the identity of Users.

**4.6** Users may register only once. The User account is non-transferable.

**4.7** Insofar as the User account or seller profile is assigned to a legal person, it shall be administered by the natural person named during registration and may only be used by that person. Transactions executed using the User account or seller profile shall be attributed to the User. Users shall be responsible for all declarations of intent they make on the platform. The User shall be liable to a foreseeable extent for declarations made by third parties under the user account, in accordance with the principles of a contract with protective effects for a third party.

**4.8** The User shall notify the Marketplace Operator without undue delay of any changes to the data provided as part of the registration or creation of the seller profile and update the User account accordingly. The User shall be obliged to reimburse any costs incurred by the Marketplace Operator due to data being incorrect or out of date.

**4.9** The User shall be obliged to keep its access data (user name and password) secret and to protect it from unauthorised access by third parties. If there are indications that the access data has become known to unauthorised third parties or have been misused, the User shall inform the Marketplace Operator without undue delay. In this case, the Marketplace Operator shall be entitled to block the User account and shall inform the User accordingly.

## **5 Functions of the Marketplace; concluding and executing contracts on the Marketplace**

**5.1** Registered Users can use the Marketplace as buyers and, if they have created a seller profile, as sellers.

**5.2** railauction.plus provides Users with various functions for initiating or concluding contracts via the Marketplace. Sellers can put goods up for sale on the Marketplace themselves. The following options are available:

- a. **Direct purchase** The placement of goods by the seller shall constitute a legally binding offer. The User shall declare its binding acceptance of the offer by clicking on the "Place Order" button. This shall result in the conclusion of a purchase agreement for the goods between the buyer and the seller. The Marketplace Operator shall inform the buyer and seller about the conclusion of the purchase agreement by e-mail or via the Marketplace.
- b. **Price Suggestion** The placement of goods by the seller shall not constitute a legally binding offer but shall merely serve as an invitation to submit an offer (invitatio ad offerendum). The User can make a binding offer to purchase the goods at a price it has proposed by proposing the price (its own price or the price suggested by the seller) and clicking on the "Send price suggestions" button. The confirmation of receipt subsequently sent automatically by the Marketplace Operator shall not

constitute acceptance of the User's offer but shall merely confirm receipt of the price proposal. The seller shall be entitled to accept or reject the offer within five working days. The seller can accept the buyer's offer by clicking on the "accept" button. This shall result in the conclusion of a purchase agreement between the seller and the buyer. The Marketplace Operator shall inform the buyer and seller about the conclusion of the purchase agreement by e-mail or via the Marketplace. If the seller does not accept the offer within five working days, the User shall no longer be bound by the offer.

- c. **Hidden auction** The placement of goods by the seller shall not constitute a legally binding offer but shall merely serve as an invitation to submit an offer (invitatio ad offerendum). The User can make a binding offer to conclude a purchase agreement at the price it has bid by clicking on the "Bid now" button. The confirmation of receipt subsequently sent automatically by the Marketplace Operator shall not constitute acceptance of the User's offer but shall merely confirm receipt of the User's bid. Regardless of when the bid is submitted, the User shall be bound by its bid throughout the entire auction period as well as for a period of five working days following the end of the auction period. After the end of the auction period, the seller shall be entitled to accept a bid. However, the seller shall not be obliged to accept bids and the User with the highest bid shall not automatically be entitled to conclude a purchase agreement. The seller can trigger the conclusion of a purchase agreement between the seller and its chosen buyer by clicking on the "select winner" button. The Marketplace Operator shall inform the buyer and seller about the conclusion of the purchase agreement by e-mail or via the Marketplace. Section 156 BGB is expressly excluded.
- d. **Open auction** The placement of the goods by the seller as an open auction with a starting price shall already constitute a binding offer by the seller to conclude a purchase agreement. The User can accept the offer and place a bid by clicking on the "Bid now" button. However, the bid shall only be accepted if the User is the highest bidder at the end of the bidding period. A bid shall expire if another User places a higher bid during the auction period. The purchase agreement shall be automatically concluded between the seller and the highest bidder at the end of the auction period. The Marketplace Operator shall inform the buyer and seller about the conclusion of the purchase agreement by e-mail or via the Marketplace. Section 156 BGB is expressly excluded. In open auctions, the following minimum increments for submitting a bid shall apply:

Up to EUR 500.00	à	EUR 1.00
EUR 500.00 or more	à	EUR 10.00
EUR 5,000.00 or more	à	EUR 100.00
EUR 10,000.00 or more	à	EUR 250.00
EUR 50,000.00 or more	à	EUR 500.00
EUR 100,000.00 or more	à	EUR 1,000.00
EUR 500,000.00 or more	à	EUR 5,000.00
EUR 1,000,000.00 or more	à	EUR 10,000.00

If the minimum bid is exceeded, the electronic bidding agent shall be automatically activated. The bidding agent automatically bids the amount necessary to become or remain the highest bidder using the specified minimum increments up to the maximum amount entered. For more information, see the FAQs and visit [bidding agent](#). If the auction is prematurely discontinued by the seller, a contract shall be

concluded between the seller and the highest bidder at that time, unless the seller was entitled to withdraw the offer. This shall be the case if:

- - the seller made a mistake when putting the goods up for sale (Sections 119 and 120 BGB);
  - after the goods have been put up for sale, it has become impossible to deliver the goods through no fault of the seller (Section 275 BGB).

**5.3** The seller shall not be entitled to participate in or place bids in its own auction. This shall also apply to the seller engaging third parties to place bids on the seller's behalf.

**5.4** The purchase agreement shall be concluded directly between the seller and the buyer. The seller's own general terms and conditions of business shall apply to the purchase agreement. The Marketplace Operator shall not become a party to the agreement concluded via the Marketplace but, as platform operator, shall merely provide the technical capabilities for concluding the agreement, unless the Marketplace Operator itself is acting as a seller by way of exception.

**5.5** Contracts concluded on the Marketplace shall be executed via the Marketplace. Once a contract has been concluded, the buyer shall enter its billing and shipping information on the platform and transmit it to the seller. Users shall be solely responsible for executing contracts concluded on the Marketplace. The Marketplace Operator shall not be involved in executing the contracts concluded unless it is acting as a seller itself by way of exception (see Section 2). In particular, the Marketplace Operator shall not be obliged to ensure the performance of the contracts concluded between the Users.

**5.6** For all transactions on the Marketplace, the applicable system time on railauction.plus shall apply exclusively. It shall only be possible to submit bids for hidden and open auctions within the specified auction period.

**5.7** If a hidden or open auction ends at a time when access to the Marketplace is not possible for all Users for technical reasons, the auction may be discontinued. Any acceptance of a bid that is incorrectly communicated by the system in this case shall be invalid. The Marketplace Operator shall inform the highest bidder at this point in time about the discontinuation of the auction without undue delay. The goods may be put up for a new auction; however, there shall be no automatic entitlement to a new auction.

## **6 Obligations of Users**

**6.1** Users are prohibited from posting content (in particular images, videos and texts) on the Marketplace that violates the rights of third parties (in particular copyrights, design rights, patent rights, utility model rights, trade mark rights and/or publicity rights as well as the German Trade Secrets Protection Act), official ordinances or common decency, or otherwise violates statutory provisions. The User shall assure the Marketplace Operator that the content posted by the User does not infringe the rights of third parties. The Marketplace Operator reserves the right to remove such content from the Marketplace without undue delay.

**6.2** Users are prohibited from offering and/or advertising goods or services on railauction.plus whose offer, sale or purchase violates common decency, these Terms of Use,

the rights of third parties (in particular copyrights, design rights, patent rights, utility model rights, trade mark rights and/or publicity rights as well as trade secrets), official ordinances or otherwise violates statutory provisions. In particular, no goods or services may be offered that contain pornographic content or content that is harmful to young people, weapons, drugs or propaganda material of anti-constitutional organisations. The User shall assure the Marketplace operator that the goods or services posted by the User do not infringe any third-party rights. The Marketplace Operator reserves the right to remove such offers from the Marketplace without undue delay.

**6.3** Goods or services that may be offered only upon production of proof required by law may only be offered and requested on the Marketplace if the proof has been included in the description of the goods or services and the goods or services are only sold upon production of the legally required proof.

**6.4** Users shall be responsible for complying with valid safety, approval, transport and environment-related regulations and obtaining operating permits. The Marketplace Operator shall not be responsible for this.

**6.5** Users acting as sellers are obliged to comply with anti-money laundering regulations.

**6.6** Users are obliged to refrain from using the Marketplace in any way that is likely to endanger or impair the operation of the Marketplace or the software behind it. In particular, when using the marketplace, Users shall not use any software or undertake any actions that could disrupt the functioning of the Marketplace or are intended to circumvent protective measures. In particular, Users shall ensure that the information and data transmitted via the Marketplace are not contaminated with viruses, worms, Trojans or other malware. Actions that may result in an excessive or unreasonable burden on the infrastructure and availability of the Marketplace are also inadmissible. Users are obliged to inform the Marketplace Operator without undue delay of any technical changes occurring in their area if they are likely to impair the service provision or security of railauction.plus. Users are obliged to compensate the Marketplace Operator for all damages resulting from the Users' failure to comply with the above obligations.

**6.7** Users are not permitted to manipulate or otherwise interfere with hidden or open auctions. In particular, Users are prohibited from manipulating the prices of their own auctions or third-party auctions by using different User accounts or acting jointly with other Users, or from purchasing their own offers in order to avoid adverse auction outcomes. Likewise, Users are prohibited from manipulating auctions or sales through the use of betabots, scripts, crawlers, scrapers or other technical measures. The same applies to the manipulation of search functions, in particular through the misuse of protected brand names.

**6.8** Sellers shall place their goods and services on the Marketplace in the appropriate category and provide correct and complete information on the item and price (fixed price in euros for direct sales or starting price in euros for auctions). Sellers are also obliged to provide information on the terms of payment and delivery and to comply with any statutory duties to provide information in connection with the initiation or conclusion of a contract via the Marketplace. For this purpose, sellers are obliged to define their own general terms and conditions. Transactions concluded via the Marketplace shall be processed in euros.

**6.9** The product description as well as the images used in it may only refer to the product offered. Advertising for products and/or companies not offered on railauction.plus is not permitted. Sellers shall not use quality seals or other third-party marks when using railauction.plus unless railauction.plus expressly permits their use.

**6.10** Users may use the contact details of other Users, which they have obtained through using railauction.plus, exclusively for pre-contractual and contractual communication on the Marketplace. Any use beyond this is prohibited. In particular, Users are prohibited from using these contact details to send advertising unless the User has expressly consented to this.

**6.11** Users are responsible for saving all relevant data and information required for the purpose of executing a contract or for other purposes on a storage medium independent of the Marketplace.

**6.12** Users are obliged, if necessary, to cooperate in the investigation of third-party attacks on the Marketplace.

**6.13** Users shall indemnify the Marketplace Operator, upon first request, against all claims asserted by third parties against the Marketplace Operator due to violation of their rights, due to infringements of the law and/or due to infringement of one of the aforementioned obligations in Section 6 of these Terms of Use if the User is responsible for these. The User shall also assume the costs of the Marketplace Operator's legal defence in this regard, including all court and lawyers' fees.

**6.14** Users are responsible under data protection law for the personal data they enter on the Marketplace and for the processing that occurs in the course of initiating a contract and the contractual relationship.

## **7 Rights of the Marketplace Operator**

**7.1** The Marketplace Operator may restrict the use of the Marketplace or specific Services for technical or security reasons.

**7.2** The Marketplace Operator reserves the right to make the use of railauction.plus services dependent on certain conditions, in particular the verification of registration data or the presentation of certain proofs of identity, payment or ownership.

**7.3** The Marketplace Operator reserves the right to exclude Users from using the Marketplace and to block User accounts permanently or temporarily, in particular if

- the User violates these Terms of Use;
- content posted by the User or the use of the portal by the User poses a security risk to the Marketplace or has a negative impact on the operation of the Marketplace;
- the User violates applicable law or the rights of third parties;
- the User is more than six weeks in arrears with its payment obligations (see Section 8).

The Marketplace Operator expressly reserves the right to take further legal action in such cases. The right of termination according to Section 10 shall remain unaffected.

## **8 Commission**

**8.1** The Marketplace Operator shall receive a sales commission from the seller/provider for fully effective conclusion of purchase agreements or other contracts via the Marketplace. This shall also apply if the concluded purchase agreement or other contract later lapses, for example, through termination, rescission, a termination agreement or subsequent impossibility. The sales commission amount shall be based on the applicable [fee schedule](#).

**8.2** The sales commission shall become due for payment immediately. The Marketplace Operator shall invoice the User for the incurred sales commissions on a monthly basis and inform the User of this by e-mail, post or by making the invoice available in the User account. If collection of the outstanding receivables fails, the User shall be obliged to reimburse railauction.plus for any additional costs, if the User is responsible for the failure.

**8.3** Users are not permitted to circumvent the commission structure of railauction.plus. In particular, it is not permitted to conclude contracts initiated on the Marketplace outside of railauction.plus.

**8.4** railauction.plus reserves the right to charge an administration fee for deleting offers or other content or for blocking Users, if the User is responsible for the violation, unless the User can prove that no damage at all or significantly less damage has been incurred.

## **9 Usage rights**

**9.1** The Marketplace Operator is the owner of all rights to the Marketplace, in particular the relevant intellectual property rights.

**9.2** The Marketplace Operator grants the User the simple, non-exclusive, non-sublicensable, non-transferable and revocable right to use railauction.plus in accordance with these Terms of Use during the term of the contract. Use of the Marketplace beyond the scope of use permitted in these Terms of Use is not permitted.

**9.3** The User grants the Marketplace Operator a simple, non-exclusive, non-sublicensable, non-transferable right, which is unlimited in terms of location and free of charge, to use the content for the purposes of Section 6.1 for the provision of the Services and for the operation of the Marketplace during the term of the contract, in particular to store it on its own servers or servers of third parties, to reproduce it, to publish it, to display it publicly or to change it.

## **10 Duration of the contract and termination**

**10.1** The usage contract or contract governing the use of the platform as a seller shall be concluded for an indefinite period.

**10.2** The User may terminate the usage contract or contract governing the use of the platform as a seller at any time without stating reasons, but not during ongoing open auctions in which it is participating as a seller or bidder.

**10.3** The Marketplace Operator may terminate the usage contract or contract governing the use of the platform as a seller at any time with a notice period of one calendar month to the



end of a calendar month. The right to block the User account (see Section 7.3) shall remain unaffected by this.

**10.4** Both parties shall also be entitled to terminate the usage contract or contract governing the use of the platform as seller without notice for cause. From the Marketplace Operator's point of view, cause shall exist, in particular, where

- the User violates Sections 1, 6, 12 or 13 of these Terms of Use;
- the User violates other provisions of these Terms of Use and does not remedy the violation even after a reasonable deadline has been set;
- the User commits or attempts to commit criminal acts;
- the User is more than six weeks in arrears with its payment obligation pursuant to Section 8.

**10.5** Any termination must be in written form in order to be valid. Termination by e-mail or via the message function of the Marketplace shall be deemed to be in written form.

**10.6** As of the effective date of termination, access to the Marketplace and User account shall no longer be available. Claims of the Marketplace Operator for payment of sales commissions shall remain in force.

## **11 Liability**

**11.1** The Marketplace Operator shall be liable without limitation for intent and gross negligence, but shall be liable for ordinary negligence only in the event of a breach of essential contractual obligations. Essential contractual obligations are obligations that must be fulfilled to allow proper performance of the contract and on which the User may regularly rely. Liability in the event of a breach of an essential contractual obligation shall be limited to the foreseeable damage typical of the contract, the occurrence of which the Marketplace Operator had to anticipate at the time the contract was signed on the basis of the circumstances known at that time. The liability of the Marketplace Operator for the guaranteed quality, in the event of injury to life, limb or health and due to mandatory statutory provisions, shall remain unaffected.

**11.2** The platform operator shall not assume any liability for disruptions within the supply network for which the Marketplace Operator is not responsible.

**11.3** Liability shall not extend to impairments of the contractual use of the Services provided by the Marketplace Operator caused by improper or incorrect use by the User.

**11.4** The above limitations of liability shall also apply analogously in favour of the Marketplace Operator's performing agents.

**11.5** For the contracts concluded between Users on the Marketplace, the Marketplace Operator neither guarantees fulfilment nor assumes liability for material defects or defects of title of the traded goods or services, unless the Marketplace Operator is acting as a seller itself and this is otherwise provided for in its General Terms and Conditions applicable to the respective offer (see Section 2).

**11.6** The Marketplace Operator shall accept no liability for the true identity, creditworthiness and power of disposal of the Users or for the content provided by the Users. In case of doubt, Users are required to inform themselves in an appropriate manner about the true identity, creditworthiness, posted content and power of disposal of a contracting party. The same shall apply to the origin of goods and services and the means by which they are acquired.

## **12 Embargo regulations**

**12.1** The User declares that the User itself, the User's shareholders as well as other natural or legal persons exercising control over the User and the financial institutions employed by the User are not listed on any sanctions list, in particular that they are not on sanctions lists of the United Nations, the European Union, its Member States or on sanctions lists of the United States of America containing denied or restricted parties. If the User becomes aware or has reason to believe that the User itself or one of the aforementioned persons is or will be listed on such a sanctions list, the User shall inform the Marketplace Operator of this in text form without undue delay. The Marketplace Operator shall be entitled to exclude the User concerned from using the Marketplace if allowing the User to continue using the Marketplace would violate the sanction regulations applicable to the User or the other persons mentioned above or would risk the Marketplace Operator being sanctioned itself.

**12.2** The User agrees to comply with the economic sanctions and other export control regulations applicable to the legal transactions to be carried out via the Marketplace, including the related capital movements and payments. The applicable European and national export control regulations to be complied with include, but are not limited to, the EU Dual-Use Regulation (EU) 2021/821 (or the corresponding successor regulation) applicable to the subject matter of contracts, technologies, software or other Services sold via the Marketplace, the restrictions of German foreign trade law (German Foreign Trade and Payments Ordinance and German Foreign Trade and Payments Act) and/or (where applicable) the EU embargo regulations and national foreign trade law applicable in the respective case, in particular (but not exclusively) the prohibitions and other restrictions of the US Export Administration Regulations (EAR) or the US International Traffic in Arms Regulations (ITAR).

**12.3** The User agrees to refrain from using the subject matter of contracts, technologies, software or other Services sold via the Marketplace for a critical end use within the meaning of Article 4 of the EU Dual-Use Regulation (EU) 2021/821 or Sections 46 et seq. of the German Foreign Trade and Payments Ordinance or a corresponding successor regulation.

**12.4** If a User violates the obligations set out under 12.1 to 12.4, the User shall be excluded from using the Marketplace and the Marketplace Operator shall in particular be entitled to suspend performance of the contract, exercise its right to extraordinary termination of the contract and not to execute the order. In the event of a violation, the User shall indemnify the Marketplace Operator against any damages the User incurs as a result of the violation.

**12.5** The obligations set out in Clause 12 shall not apply if the specific obligations constitute a violation of the prohibition on boycott declarations (Section 7 of the German Foreign Trade and Payments Ordinance) or of the European Union's blocking statute (Regulation (EU) 2771/96) or its respective successor regulation.

## **13 Compliance**

13.1 As part of their business relationship and in connection with the use of the platform, the parties undertake the following:

- To comply with all applicable laws, regulations, directives, and other legal provisions, including but not limited to anti-corruption laws
- To take all necessary measures to avoid corruption, any other criminal acts and other serious misconduct

In particular, they shall take all necessary precautionary measures within their own companies to prevent gross misconduct both within Germany and abroad. Irrespective of the nature of the involvement in committing, inciting or aiding and abetting an offence, gross misconduct is deemed to be:

- a. serious criminal offences committed in business dealings. This includes criminal offences that involve, in particular, bribery, fraud, corruption, embezzlement and abuse of trust, document forgery or similar offences;
- b. offering, promising or granting undue benefits to any civil servant, public official, or other office holder or person specifically bound to carry out public service duties (bribery or granting an undue advantage), or to other business partners (bribery in business conduct);
- c. any unauthorised procurement, securing, exploitation or disclosure of commercial or business secrets for competitive purposes, for personal gain, for the benefit of a third party or with the intent to inflict damage or loss on the proprietor of a business, or any unauthorised exploitation or disclosure of documents or technical instructions entrusted in business dealings, for competitive purposes or for personal gain, and additionally any unauthorised exploitation or disclosure of documents, instructions of a technical nature or commercial information belonging to the client, entrusted in business dealings, including any such material supplied on data storage media, for competitive purposes or personal gain;
- d. any violation of regulations designed to protect unimpeded competition; in particular, violations of hardcore restrictions in accordance with Article 101 of the Treaty on the Functioning of the European Union (TFEU), Section 1 of the German Act Against Restraints of Competition (Gesetz gegen Wettbewerbsbeschränkungen, "GWB") (price, bidding, quantity, quota, territorial and customer allocation agreements);
- e. any infringement of economic sanctions or the circumvention of European Union sanctions or of other applicable national, European or international embargo or trade-control regulations; and
- f. fother serious criminal offences or gross misconduct. These include criminal offences and administrative offences; in particular, offences resulting from violations of Sections 6, 12 and 13 of these Terms of Use, terrorist offences, involvement in a criminal organisation, money laundering, terrorism financing, child labour and other forms of human trafficking or similar offences.

## 14 Privacy

14.1 railauction.plus provides information on the processing of personal data by railauction.plus, including the transmission to third parties and the rights of the User as a data subject, in the railauction.plus [privacy statement](#).

## 15 Confidentiality

**15.1** The Marketplace Operator shall treat as strictly confidential all confidential information as well as business and trade secrets that become known in the course of using the Marketplace and are marked as confidential and shall only use them in accordance with these Terms of Use.

**15.2** The Marketplace Operator reserves the right to deviate from the obligation to maintain secrecy in Para. 1 if it is required to disclose a User's information due to legal, judicial or official orders or if confidential information has entered the public domain by other means.

**15.3** The Marketplace Operator may obtain, use or disclose a User's business secrets of the user within the scope of Section 1 of the German Trade Secrets Protection Act (Gesetz zum Schutz von Geschäftsgeheimnissen, "GeschGehG") only in accordance with the provisions of Sections 3, 4 and 5 GeschGehG.

## **16 Changes**

**16.1** The Marketplace Operator shall be entitled at all times to change the Marketplace and the Services provided free of charge, to provide new Services free of charge or for payment or to no longer provide Services free of charge in the future and to amend these Terms of Use accordingly.

**16.2** The Marketplace Operator can amend and adapt the paid Services and accordingly these Terms of Use with future effect as described below if there is a valid reason for the change and insofar as the changes are reasonable taking into account the interests of the Marketplace Operator and the User. In particular, the Marketplace Operator shall deem a good reason to exist in the event of technical issues, in the event of a non-negligible issue in the usage contract's equivalence that was not foreseen at signing or if changes are necessary for the further performance of the contract following a court ruling or new legislation. The Marketplace Operator shall send Users the amended Terms of Use in text form at least six weeks before they are due to come into force and shall specifically draw the Users' attention to the new regulations and the date on which they are due to come into force. At the same time, the Marketplace Operator shall grant Users a reasonable period of at least six weeks to state whether they object to the amended Terms of Use. This six-week period shall start when the User receives the written notification of the upcoming changes. The Marketplace Operator shall deem the User to have accepted the amended Terms of Use if the User does not explicitly object to them within the allotted six-week period. At the beginning of the six-week period, the Marketplace Operator shall inform the User specifically about this legal situation, i.e. their right of objection, the associated deadline and what happens if they do not make any statement. Changes can be made to obligations arising from the core service only if the User actively consents to such changes.

## **17 Final provisions**

**17.1** The User's rights from the contract with the Marketplace Operator shall not be partially or completely transferred to third parties.

**17.2** Users shall be entitled to offset counterclaims against the Marketplace Operator only if the counterclaims are undisputed or legally binding.

**17.3** The law of the Federal Republic of Germany shall apply to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG). The venue for all legal disputes between the Marketplace Operator and the User arising from or in connection with the use of the Marketplace is Frankfurt am Main. However, the Marketplace Operator shall also be entitled to institute proceedings against the User at the User's registered office.

**17.4** The contract is in German. Translations of these Terms of Use into other languages are for the User's information only. In the case of interpretations and contradictions, the German language version shall always take precedence.

**17.5** Should a provision of these Terms of Use be or become invalid, this shall not affect the remaining provisions. The parties shall immediately replace the ineffective provision with a valid provision that reflects the commercial intent of the ineffective provision as closely as possible. The same shall apply if a provision is not enforceable or the contract in question contains a loophole.

Last modified: 29 March 2023