

# General Terms and Conditions for the supply of digital data by the BSH

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## Annex 2

### Preliminary notes on Annex 2

*The General Terms and Conditions apply to the provision of digital data in connection with non-exclusive usage rights (internal use).*

*These General Terms and Conditions only apply to the digital data of the BSH. This means that, for example, different general terms and conditions apply to analogue Notices to Mariners than to digital Notices to Mariners.*

*Own use is already covered in Annex 2(6), so a declaration by the user that s/he has taken note of and acknowledge the General Terms and Conditions is sufficient to establish a legally binding agreement on the rights of use.*

*In order not to overload the General Terms and Conditions with special provisions, further rights of use within the meaning of Annex 2(5), Paragraph 6 of the General Terms and Conditions must be approved by supplementary written agreement.*

*This applies to the granting of rights of use of information and rights of further utilisation.*

### **General Terms and Conditions (GTC) for the provision of digital data of the BSH with non-exclusive usage rights**

The Federal Republic of Germany, represented by the Federal Ministry for Digital and Transport (BMDV), represented by the Federal Maritime and Hydrographic Agency (hereinafter referred to as the BSH), shall make digital data available for use by purchasers. The prerequisite for using this data is the conclusion of a contract with the BSH on the basis of the following General Terms and Conditions (GTC). The terms and conditions valid at the time of the order shall apply. Deviating regulations will only be recognised if they have been confirmed in writing by the BSH.

### **1. Subject**

The General Terms and Conditions apply to the provision of digital data with non-exclusive usage rights (internal use) by delivery (e-mail or on data carriers, e.g. CD-ROM) or transfer (e.g. via FTP) or via interactive research in online databases.

### **2. Conclusion of contract**

(1) In the case of interactive research by the purchaser in a database provided on the Internet, the contract is concluded when an order is placed/data is retrieved and the general terms and conditions available online are accepted.

(2) In the case of the provision of digital data by the BSH (delivery), the contract shall only come into effect after written request by the purchaser(s), either through confirmation by the BSH or through the transmission of data.

(3) The BSH shall provide the data immediately after conclusion of the contract, usually in the order of receipt or according to objective criteria. These General Terms and Conditions apply to subscription and individual orders. The customer will be notified of any changes in writing. S/he shall have the right to object to the changed conditions in writing within a period of one month after notification. After expiry of this period, the amended conditions are deemed to be accepted.

(4) The general terms and conditions of the purchaser shall not become part of the contract. Contracts are only concluded on the basis of the General Terms and Conditions of the BSH.

### **3. Fees**

The services of the BSH are provided against payment in accordance with the BSH's currently valid fee regulations. If the BSH is unable to provide the services in full for technical reasons or for other reasons for which the BSH is not responsible, the fee shall not change as a result, provided that this reduction in performance is not substantial.

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### 4. Due date of payments and default

If no advance payments have been agreed, the fees shall be due in accordance with the valid fee regulations immediately after receipt of the invoice without deduction. The purchaser is in default of payment if s/he has not made payment within 30 days of receipt of the service and receipt of the invoice.

### 5. Rights of use

(1) The purchaser is granted non-transferable, non-exclusive rights of use according to Section 31(2) of the Act on Copyright and Related Rights (UrhG) of the provided digital data (data).

#### (2) Intended use

The purchaser shall use the data exclusively for internal purposes, i.e. for his/her own personal or internal business purposes. Employees of the purchaser or third parties commissioned by the purchaser shall not use the data for their own or their private purposes. The data provided on the basis of this contract shall under no circumstances be used for navigation purposes.

#### (3) Adaptation

The purchaser may adapt the data (e.g. generalise, extend thematically) or have them adapted by a third party commissioned by him/her. The purchaser and any third parties commissioned by him/her may use the results of the adaptation exclusively for the purposes stipulated under (2).

(4) Insofar as the results of the adaptation are own intellectual creations within the meaning of Section 3 Sentence 1 of the Act on Copyright and Related Rights (UrhG), the purchaser or any third parties commissioned by the purchaser shall only use the work without restriction and without the explicit consent of the BSH if the data made available to the purchaser cannot be extracted from the adaptation result without considerable effort. The adaptation of restricted data (see (6)) for the purpose of one's own intellectual creation, from the result of which the restricted data can be derived, is not permitted without the written consent of the BSH.

#### (5) Publication, disclosure of data

The data provided or results derived therefrom may be disclosed to third parties, provided that this serves exclusively the intended purpose of the purchaser as stated under (2). In this case, the purchaser undertakes to agree in writing with the third party that use outside the intended purpose is excluded and that the provisions of these General Terms and Conditions shall apply in all other respects. In addition, the purchaser must oblige the third party to destroy the data after the purpose for which it was intended has been achieved.

(6) Any other use that goes beyond the purposes provided in (2) requires the written consent of the BSH.

The further use of individual data records is restricted or excluded (access restriction) for the purpose of public safety and order or for the protection of the personal data and business secrets of third parties, in particular the use of the data on underwater obstacles (DUWHAS), (Annex 1, Number 3), and the data of the BSH Ship Information System (BISS) or its successor (DeuMarDa), (Annex 1, Number 8).

#### (7) Research purposes

The purchaser may use the data provided or results derived therefrom for non-commercial research projects, provided that the data is not subject to restricted access (see (6)).

A research project is considered to be non-commercial if its findings are available without delay due to commercial considerations at the cost of provision and are subsequently submitted for free publication.

#### (8) Teaching purposes

The purchaser may use the data provided or results derived from it for courses of vocational training as long as the data is not subject to restricted access (see (6)).

Vocational training includes education in general or vocational public and private schools where instruction is provided according to state-approved curricula, university education, and practical vocational training in a rec-

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ognised occupation requiring formal training.  
(9) The purchaser shall take suitable precautions to ensure that any unauthorised access by third parties to the information transmitted is excluded. S/he undertakes to store passwords and access codes carefully, protected from access by third parties, and to protect them from loss and misuse.

Immediately after becoming aware of any unauthorised access or unauthorised disclosure of the data to third parties, the purchaser shall inform the BSH about the access or disclosure, the identity of the third party and the measures to be taken against unauthorised use by the third party.

(10) Source reference

The purchaser and any third parties must refer to the data source for each presentation as follows: "Data source: Dataset designation ©, Federal Maritime and Hydrographic Agency, place, year".

### 6. Transmission

(1) The provision of the services shall be effected either by **retrieval** from the BSH or by **delivery** to the purchaser. The mode of transmission and the date of provision (for example, for FTP) are to be determined by the BSH.

(2) The BSH shall select a suitable, commercially available fulfilment service for **delivery**. Consignments within Germany and to foreign countries are charged at cost. In the case of deliveries abroad, the purchaser shall bear the additional taxes and customs duties.

(3) **Place of performance** is the BSH office in Hamburg.

(4) The recipient is obliged to check the consignment for completeness and accuracy of content immediately upon receipt. Complaints about obviously incorrect or incomplete consignments must be made within 10 days of receipt of the shipment. Delivered data must be checked for completeness and readability within two weeks of receipt of the consignment. Complaints by the purchaser or recipient will only be accepted within these

deadlines. Ordered and correctly executed consignments are neither exchangeable nor returnable.

(5) The BSH is entitled to make partial deliveries.

### 7. Right of ownership

The right of ownership of physical data carriers is reserved until full payment has been received.

### 8. Disclaimer

The BSH is not liable for the suitability of the data for the purpose intended by the purchaser, the infringement of third-party rights, or the validity, correctness, completeness, accuracy, consistency or quality of the data. In particular, the BSH does not accept any liability for damages to the purchaser or third parties resulting from the installation of programs or the use of data.

This limitation of liability does not apply to damages resulting from injury to life, body or health due to a negligent breach of duty on the part of the BSH or an intentional or negligent breach of duty on the part of a legal representative or a person deployed to fulfil an obligation of the BSH, nor to other damages due to a grossly negligent breach of duty on the part of the BSH or an intentional or grossly negligent breach of duty on the part of a legal representative of the BSH or a person deployed to fulfil an obligation of the BSH.

### 9. Damages and contractual penalty

For each case of unauthorised disclosure of data in breach of duty, the purchaser undertakes to pay a contractual penalty at the equitable discretion of the BSH, to be reviewed if necessary by the competent court. The contractual penalty will be based on the amount of the fees the BSH would have otherwise received. A forfeited contractual penalty shall be set off against any damages.

The purchaser shall indemnify the BSH against any costs and claims of third parties arising from the disclosure of data in breach of duty.

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### 10. Protection of personal data (data protection)

The BSH processes personal data in accordance with the provisions of the European General Data Protection Regulation (GDPR) and the German Data Protection Act (BDSG) in order to fulfil contractual obligations or for the purpose of performing this contract (Art. 6 para. 1 b) GDPR).

The BSH stores the data for the period of time required for contractual purposes and for any audits by the German Federal Court of Auditors in accordance with the relevant applicable regulations.

Contact persons for data protection can be found at <https://www.bsh.de/DE/Service/Datenschutz/datenschutz.html>.

For the purpose of data minimisation, only such personal data and documents (data) that are necessary for the performance of the contract will be requested from the purchaser.

### 11. Place of jurisdiction and choice of law

For all disputes between the contracting parties arising from this contract or in connection with this contract, Germany shall be the exclusive international place of jurisdiction and Hamburg shall be the exclusive national place of jurisdiction, unless otherwise stipulated by law.

The regulations of the contractual and non-contractual relationship between the parties to the contract shall be governed exclusively by the law of the Federal Republic of Germany, unless otherwise stipulated by mandatory law.

## Cancellation policy

### Right of withdrawal

You have the right to withdraw from this contract within 14 days without giving reasons.

The withdrawal period is 14 days from the date of conclusion of the contract.

In order to exercise your right of withdrawal, you must notify the Bundesamt für Seeschifffahrt und Hydrographie (BSH)

Bernhard-Nocht-Strasse 78

20305 Hamburg, Germany

Phone: +49 (0) 40-3190-0

Fax: +49 (0) 40-3190-5000

E-mail: [posteingang@bsh.de](mailto:posteingang@bsh.de)

by means of an unequivocal statement (e.g. a letter sent by post, fax or e-mail ) of your decision to withdraw from this contract. You can use the attached withdrawal form template for this purpose, but this is not mandatory.

In order to comply with the withdrawal period, it is sufficient to send the notification of the exercise of the right of withdrawal before the end of the withdrawal period.

### Consequences of withdrawal

If you withdraw from this contract, the BSH shall reimburse you for all payments that the BSH has received from you, including delivery costs (with the exception of additional costs resulting from the fact that you have chosen a different type of delivery from the cheapest standard delivery offered by the BSH), immediately and at the latest within 14 days of receiving notification of your withdrawal from this contract. For this repayment, the BSH will use the same means of payment that you used for the original transaction, unless expressly agreed otherwise with you; under no circumstances will you have to bear charges for this repayment. The BSH may refuse repayment until the BSH has received the goods back or until you have provided proof that you have sent back the goods, whichever is earlier.

You must send back or hand over the goods to the BSH at the above address without delay and in any case within 14 days at the latest from the day on which you inform the BSH of your withdrawal from this contract. The deadline is met if you send the goods before the end of the 14-day period.

You shall only be liable for any loss of value of the goods if this loss of value is due to handling of the goods which is not necessary for testing the nature, properties and functioning of the goods.

You shall bear the direct costs of returning the goods.

If you have requested that the services be commenced during the withdrawal period, you shall pay the BSH an appropriate amount corresponding to the proportion of the services already provided up to the point in time at which you inform the BSH of the exercise of the right of withdrawal from this contract compared to the total scope of the services provided for in the contract.