DATEV SmartTransfer portal - Terms of use (reception)

Between

DATEV eG, Paumgartenstraße 6-14, 90429 Nuremberg/Germany

hereinafter referred to as “DATEV”

and the user of the DATEV SmartTransfer portal (reception)

hereinafter referred to as “recipient”

1. Subject matter and scope

1.1. On behalf of its customers and other senders, DATEV supplies the recipient (business partner of the customer) via the Web application DATEV SmartTransfer portal (reception) with an electronic inbox. The application is designed for receiving documents and messages and is provided free of charge. A direct contractual service relationship between DATEV and the recipient is not established.

1.2. These terms of use govern the provision by DATEV and the use by the recipient.

1.3. Information on DATEV is available at http://www.datev.de.

1.4. By agreeing to these terms of use, the recipient submits a bid to agree on the terms of use. This bid is only concluded by an acceptance e-mail from DATEV.

2. Registration

2.1. In order to use DATEV SmartTransfer, it is mandatory to register, and that DATEV creates a reception account in the portal.

2.2. The recipient will receive their login information from DATEV in the form of username and password. The recipient must keep this access data secret and to protect it against unauthorized access. In addition, it is possible to login using an existing DATEV SmartLogin/SmartCard.

2.3. The participant’s address as an authorized recipient is published and visible in the participant directory of the portal for all other registered participants as well as participants of other connected third-party platforms.
In addition, the information that a participant is registered in the network is made available to potential customers who are business partners of the respective participant.

2.4. The recipient is responsible for any use in connection with their user name and password or with SmartLogin/SmartCard.

2.5. The recipient declares to be an entrepreneur within the meaning of section 14 of the German Civil Code (BGB).

The recipient confirms that all information provided to DATEV in connection with the creation and use of the electronic inbox is truthful.

2.6. No entitlement to registration and use is given.

3. **Scope of use**

3.1. DATEV SmartTransfer is a technical web application for administration and a technical interface for downloading documents and messages in different free electronic data formats such as PDF or TIF. The User may also transfer the documents online to DATEV companies for further processing. The requirements for this must be met. The scope of use is limited to this.

3.2. All content is deleted from the electronic inbox after 90 days.

3.3. The recipient is responsible for retrieving documents and messages as well as handling the electronic inbox.

3.4. In particular, the archiving of documents and data backup are not included.

3.5. DATEV receives no documents and messages on behalf of the recipient.

3.6. The recipient is responsible for creating the technical conditions for use.

4. **Declaration of consent for sending documents and messages to the recipient’s electronic inbox**

4.1. The recipient agrees to the permanent registration as an authorized recipient / participant for all types of documents, including invoices and messages via the entire DATEV SmartTransfer portal.

4.2. The recipient declares his consent to the dispatch of documents and messages of all types, including invoices, to his electronic inbox by other registered participants.

4.3. The recipient is obliged to review the electronic inbox regularly.

4.4. The recipient may deactivate the electronic document reception functions in the portal at any time.
5. **No responsibility of DATEV for the contents of third parties**

5.1. The received messages and documents are exclusively the contents of third parties. DATEV processes and sends them exclusively on behalf of third parties.

5.2. DATEV does not check the contents of third parties on completeness, accuracy, and legality, and, therefore, takes no responsibility in this regard.

5.3. DATEV does also not check the contents of third parties on quality, or suitability for a particular purpose, especially on the German ‘Principles regarding the proper keeping and preservation of books, records and documents in electronic format and regarding data access’ (GoBD) or other national or international norms.

5.4. Furthermore, support for audit procedures, in particular for external tax audits (data access by auditors, for example, according to section 147 paragraph 6 Fiscal Code) is not mandatory.

5.5. In particular, it is not possible to fulfil the land registry recording function within the meaning of the German ‘Principles regarding proper bookkeeping and preservation of books, records and documents in electronic format and regarding data access’ (GoBD) with the presented application. Further organizational measures are necessary to comply with the current requirements of proper bookkeeping.
6. **Duty to cooperate**

6.1. For the use of DATEV SmartTransfer and the DATEV SmartTransfer software the recipient assumes the following obligations or creates the following technical requirements:

- The recipient must install and configure the Viper-/TRAFFIQX-Connector software on the relevant computer or server if it is used as a data connection. After release of the latest Viper-/TRAFFIQX-Connector software version, the recipient must upgrade the software within eight weeks due to the fact that after that date older versions are no longer supported and may be excluded from using the nodal point or the DATEV SmartTransfer network without notice (e.g. due to changes in data formats or data structures).

- The Viper-/TRAFFIQX-Connector software must be able to send and receive data via the Internet.

- In order to use DATEV SmartTransfer (reception), the recipient must employ a browser, be equipped with an Internet access and a validated e-mail address.

6.2. **Misuse of the DATEV SmartTransfer network or the software by the recipient.**

The recipient must refrain from abusive behaviour. Abusive behaviour is particularly given if the recipient

- makes changes to the DATEV SmartTransfer software or to data that is sent from the software to the DATEV SmartTransfer network thus endangering the integrity of data and communication process;

- carries out transactions without the intention to create legal relations towards other end users or participants of the DATEV SmartTransfer network in more than a minimum scope, or if this is based on intent;

- takes actions which violate copyrights or ancillary copyrights in the software or the DATEV SmartTransfer network;

- grants access to unauthorized persons.
7. **Termination of use**

7.1. The recipient can terminate this contractual relationship without notice in writing at any time.

7.2. DATEV can terminate the contractual relationship in writing within a period of one month.

7.3. The right to extraordinary contract termination shall remain unaffected. After termination of the contractual relationship, the recipient has the option of downloading all data sent to DATEV within 30 days. After this period, DATEV will irretrievably delete the data to the extent permitted by law.

8. **Access Restriction**

8.1. DATEV is entitled to block the recipient’s access temporarily or permanently without prior notice, provided concrete evidence of a violation of the Terms of Use, or applicable law, or any other legitimate interest of DATEV in blocking the access.

8.2. DATEV informs the recipient about the blocking via e-mail.

9. **Availability**

9.1. Data center services and cloud services

Data center services and cloud services are executed in the DATEV data center. The operating times of the DATEV data center are shown in the data timetable (Doc. No. 0908200).

9.2. Maintenance work and malfunctions

Maintenance windows on systems (software, servers, networks, and infrastructure) are usually provided outside the times from Monday to Friday 7:30 am to 18:00 pm with the exception of public holidays. The recipient is informed at least 2 working days in advance of the maintenance work if the maintenance affects the DATEV SmartTransfer service. The maintenance work is announced on the DATEV SmartTransfer service page, the data center status or by e-mail. This does not include emergencies. The time in which scheduled maintenance work is carried out count as time in which the services are available.

10. **Limitation of liability**

DATEV’s liability is limited to damage resulting from an intentional or grossly negligent breach of duty.
11. **Data protection**

11.1. DATEV stores and processes data that reaches the recipient’s electronic inbox exclusively on behalf of its clients (customers or other senders, or their service providers), but not for the recipient.

11.2. The data protection declaration regarding the DATEV SmartTransfer portal applies to the recipient’s inventory data and usage data and is available at https://www.datev.de/datenschutz

12. **Amendments to the terms of use**

12.1. DATEV may amend the terms of use at any time with effect for an existing contractual relationship.

12.2. DATEV shall inform the user at least four weeks prior to an amendment.

12.3. These amendments shall be deemed accepted, if the user does not reject them within one month after receipt of the notification of change, and does not terminate the use.

12.4. If the amendments are rejected, the initial conditions continue to apply.

13. **Any other business**


13.2. The exclusive place of jurisdiction for merchants is Nuremberg.

13.3. If any regulation of these Terms of Use is invalid, the remaining valid regulations remain unaffected. The parties agree to replace the respective invalid regulations by valid ones that come closest to the purpose of this agreement.

As of March 2019