

General Terms and Conditions of Trade for the use of the Bitplaces management platform and the Bitplaces software

I. Definitions, application area / conclusion of contract

1. Definitions

- 1.1 **"App"** in the sense of these General Terms and Conditions of Trade (Terms of Trade) is the application software created by the customer into which the contractual software (as defined below) provided by Bitplaces is integrated.
- 1.2 **"Bitplaces"** in the sense of these Terms of Trade is Bitplaces GmbH, Marie-Elisabeth-Lüders-Straße 1, 10625 Berlin.
- 1.3 **"Third party"** in the sense of these Terms of Trade is any natural or legal person except Bitplaces and the customer (as defined below).
- 1.4 **"Final customer"** in the sense of these Terms of Trade is a person to whom the customer makes available the app created using the contractual software.
- 1.5 **"Geofence"** in the sense of these Terms of Trade is a geographic territory defined by the customer, whereby a targeted marketing process (as defined below) is triggered as soon as a customer is present in this territory.
- 1.6 **"Customer"** in the sense of these Terms of Trade is a person who downloads the software from Bitplaces and/or integrates it into other software, links it with other software, or uses it in any other way.
- 1.7 **"Management platform"** in the sense of these Terms of Trade is a software-as-a-service solution provided by Bitplaces and available online which enables the customer to access the data collected with the help of the app as well as to define geofences and targeted marketing processes.
- 1.8 **"Online contract"** in the sense of these Terms of Trade is a contract between Bitplaces and the customer on the use of the contractual software and the management platform which is generated when the customer accepts an offer from Bitplaces on the Bitplaces website without any supplements, modifications or conditions whatsoever.
- 1.9 **"Framework contract"** in the sense of these Terms of Trade is the contract concluded separately between Bitplaces and the customer in written form (email or hard copy) on the use of the contractual software and the management platform. An online contract is not a framework contract in the sense of these Terms of Trade.
- 1.10 **"Targeted marketing process"** in the sense of these Terms of Trade is a process defined by the customer with the aid of the management platform which is triggered on the final customer's mobile terminal device on which the app is installed when the customer is in a geofence. This can be, for instance but not exclusively, a push notification or a text message, the opening of a pop-up, or a voicemail.
- 1.11 **"Mobile process"** in the sense of these Terms of Trade is a process defined by the customer with the aid of the management platform which is triggered on the final customer's mobile terminal

device on which the app is installed when the customer is in a geofence. This can be, for instance but not exclusively, communication with a database of the customer relating to a geofence process, or the display of mobile services which are only available at a geofence.

- 1.12 "**Contractual software**" in the sense of these Terms of Trade is the software tool (software development kit SDK) provided by Bitplaces for integration into the customer's app in order to enable mobile targeted marketing or mobile process automation.

2. **Application field / conclusion of contract**

- 2.1 Bitplaces develops and sells the contractual software for location-dependent targeted marketing as well as for the improvement of mobile processes, and also offers the customer a management platform for the control and analysis of the targeted marketing and mobile process automation. These General Terms and Conditions of Trade (**Terms of Trade**) apply to the use of the software as well as the management platform.
- 2.2 The use of the contractual software and the management platform requires – subject to the provision in Section 2.3 – the conclusion of an effective contract between Bitplaces and the customer. This contract conclusion can take the form of an online contract or a framework contract. In both cases, these Terms of Trade apply unless the framework contract expressly determines otherwise. The payments to be paid by the customer to Bitplaces as well as the services to be provided by Bitplaces (functioning / specification etc. of the contractual software and the management platform) shall be according to this contract.
- 2.3 In individual cases, Bitplaces can permit the customer to use the contractual software and the management platform for test purposes. In such a case, the following Terms of Trade apply with the following provisos:
- (a) The customer is authorised to use the software and the management platform for test purposes only. Commercial use of the contractual software and/or management platform is not permitted. Bitplaces is not liable for any violation of third-party rights that result from the commercial use of the management platform and/or the contractual software.
 - (b) The customer is not permitted to pass the contractual software on to third parties, including in the form of an app, to distribute the contractual software and/or to render it publicly accessible. In particular, the customer is not permitted to make apps containing the contractual software publicly available via Apple's App Store or Google's Play Store or similar portals.
 - (c) The customer is not permitted to pass the contractual software on to final customers, and in particular to collect, process and/or save or cause to be saved final customer data with the aid of the contractual software. Bitplaces accepts no data-protection obligations or warranties with regard to data collected, generated, processed or saved with the aid of the contractual software or management platform provided for test purposes.
 - (d) The customer is obliged to fully and finally delete all copies of the contractual software provided to him for test purposes at the latest 30 calendar days after receiving the contractual software.
 - (e) Bitplaces is entitled to terminate the test phase at any time and without giving reasons, and to block test access by the customer to the management platform and/or the contractual software.

II. Use of the contractual software

The following conditions apply to the use of the contractual software:

3. Contractual software / integration into apps

- 3.1 Bitplaces provides the customer with the contractual software in the form of a download or on a data medium. When integrated in an app, the contractual software enables mobile, location-independent targeted marketing and facilitates geo-related, mobile processes as well as their optimisation.
- 3.2 Bitplaces provides the contractual software in a version compatible with the iOS and/or Android systems. Unless expressly stated otherwise in the framework contract, the contractual software is supplied without a description and/or documentation.
- 3.3 The customer is solely responsible for creating the app and integrating the contractual software into the app. The customer is solely responsible for sales and distribution of apps, the functionality of apps, and their use by final customers.
- 3.4 At irregular intervals, Bitplaces will revise, update and upgrade the contractual software. Bitplaces will inform the customer in a suitable form (e.g. email, pop-up or other form) about corresponding updates of the contractual software and will provide the customer with the corresponding contractual software updates. The customer must implement these updates in the apps he has provided to the final customer. Otherwise we cannot guarantee (fault-free) functioning of the contractual software and the management platform.

4. Commercial property rights

- 4.1 The contractual software is protected by property rights. Bitplaces is the owner of all rights of utilisation of the contractual software. Additionally, the use of the contractual software as well as the processes carried out with its aid are (partly) protected by technical property rights of Bitplaces.
- 4.2 The customer is entitled to use the contractual software, especially to integrate it into an app, and to reproduce and distribute the contractual software only in as far as this is expressly provided for in the framework contract.
- 4.3 The customer is entitled to integrate the software – in as far as this is provided for in the framework contract – into an app he has created. The customer is prohibited from any further processing, alteration and/or decompiling of the contractual software.
- 4.4 The customer is not permitted to distribute the contractual software or otherwise make it available to third parties in isolated form, without integration in an app, unless expressly stated otherwise in the framework contract.

5. Warranty

- 5.1 Bitplaces is the owner of all rights of use of the contractual software and will indemnify the customer against any property rights claims of third parties based on the use and reproduction of the contractual software in accordance with these Terms of Trade and – if it exists – the framework contract.

III. Use of the management platform

The following provisions apply to the use of the management platform:

6. Management platform

- 6.1 Bitplaces provides the customer with online access to the management platform. The management platform enables customers, among other things, to set up geofences, define targeted marketing processes, and to view the statistical analyses of the final customer data compiled by Bitplaces.
- 6.2 The extent of the options available to the customer on the management platform is determined by the online description of services presented by Bitplaces on conclusion of the contract, and/or by the framework contract. Bitplaces is not obliged to provide documentation of the management platform, or to instruct the customer in its use.
- 6.3 Bitplaces makes every effort to always keep all its services up to best technology standards. However, there is no obligation to further develop or improve the management platform beyond the status on conclusion of the contract.

7. Commercial property rights

- 7.1 The design of the management platform as well as the data contained in it are protected by copyright. Bitplaces is the owner of all utilisation rights to the management platform and the data it contains. Furthermore, the processes and devices necessary for processing the data are (partly) subject to technical property rights.
- 7.2 The customer is entitled to use the management platform. The customer is not entitled to grant third parties access to the management platform and/or to make permanent copies of the data stored on the management platform and/or to pass this data on to third parties and/or to distribute it in any other way.
- 7.3 For the duration of this contract, Bitplaces retains a cost-free, non-exclusive right to use all data the customer enters into the management platform and/or data that is entered into the management platform on the instruction of the customer as well as the right to reproduce, process and save the data. Bitplaces is not entitled to pass this data on to third parties.

8. Warranty

- 8.1 Bitplaces is the owner of all utilisation rights to the management platform and will indemnify the customer from copyright claims of third parties based on use of the management platform within the framework of these Terms of Trade.
- 8.2 Bitplaces makes every effort to ensure unrestricted availability and functionality of the management platform. A temporary non-availability of the management platform does not constitute a fault as long as the duration of the non-availability does not exceed a period of 4 hours per day. Bitplaces does not accept any liability for non-availability of the management platform due to causes originating with third parties, in particular disruptions suffered by the internet provider, other network disruptions or disruptions at the provider of the server used by Bitplaces for the provision of the management platform.
- 8.3 At regular intervals, Bitplaces makes backup copies of the data saved on the management platform for the customer. However, Bitplaces is only liable for a complete or partial loss and/or damage or corruption of this data in case of gross negligence or intent.
- 8.4 The management platform is optimised for display using the browsers Google Chrome and Mozilla

Firefox. Bitplaces always supports the current and previous main versions of Google Chrome and Mozilla Firefox. Bitplaces does not provide any guarantee of a (fault-free) representation of the management platform with other browsers.

- 8.5 In case of a malfunction of the management platform, Bitplaces first has the right to remedy the malfunction. If the malfunction is not remedied within five working days, the customer has the right to withdraw from the contract, observing a period of notice of five more working days, unless otherwise stated in the framework contract.

9. Marketing content

- 9.1 According to the framework contract, the customer can use the management platform to define targeted marketing processes and to set up geofences. The customer is solely responsible for the content of the targeted marketing processes, the setting up of the geofences, and the goods and/or services advertised by the customer with the aid of the contractual software, the app and the management platform.
- 9.2 Bitplaces is not obliged to check the legality of the contents of the targeted marketing processes, the setting up of the geofences defined by the customer, and/or the goods and/or services advertised. The customer is prohibited from using the management platform and/or the contractual software to offer, advertise and/or disseminate illegal, racist, fascist, anti-Semitic or other offensive and/or pornographic content. In case of a violation of this provision, Bitplaces is entitled to immediately delete this content and to block the customer's access to the management platform. Furthermore, in such a case Bitplaces has the right to terminate the contract without notice.
- 9.3 The customer indemnifies Bitplaces against all claims lodged against Bitplaces by final customers and/or third parties due to the use of the management platform, the setting up of geofences and/or the targeted marketing processes. In particular, the customer in this case indemnifies Bitplaces against all legal defence costs, including court fees, incurred by Bitplaces.
- 9.4 The indemnification according to the above Section 9.3 does not apply if the third-party claims are exclusively based on a contractual violation for which Bitplaces is liable according to the special warranty terms (Section 5, Section 8 or Section 17) of these Terms of Trade.

IV. Data protection

The following data protection agreement applies both to the use of the contractual software and the use of the management platform:

10. Order data processing

- 10.1 The customer is aware that the integration of the contractual software into the app means that when this app is used by the final customer, data of the final customer is collected in order to enable mobile targeted marketing and mobile process automation, and that this data is saved on the management platform. The customer alone is responsible for the collection of this final customer data and must ensure that all statutory data protection provisions are observed, in particular that the final customers have provided an adequate declaration of consent before this data is collected.
- 10.2 On behalf of the customer, Bitplaces collects, saves and processes the final customer data provided during use of the app in as far as this is necessary for the performance of the mobile

targeted marketing agreed in the framework contract. This data processing service in the sense of § 11 BDSG (German Federal Data Protection Act) carried out by Bitplaces (the supplier) on the order of the customer (ordering party) is subject to the following conditions:

- (a) The customer, as the ordering party, is responsible for the observance of the statutory provisions of the data protection laws, in particular for the legality of the provision of the data to Bitplaces as the supplier as well as for the legality of the data processing ("responsible party" in the sense of § 3 Subs. 7 BDSG).
- (b) On the order and instruction of the customer, Bitplaces carries out the following data processing activities:
 - (i) Unless otherwise specified in the framework contract, Bitplaces only records a push ID and an app ID for each final customer. It does not record phone numbers or other data that would allow an allocation of the data to a natural person.
 - (ii) During use by the final customer, the contractual software from Bitplaces performs background tracking which determines the position of the mobile terminal device based on the position data collected by the operating system of the terminal device and in particular determines whether the terminal device is in a geofence.
 - (iii) Bitplaces supplies a statistical analysis of the final customer data including the number of final customers, the number of targeted marketing processes, the traffic in the customer-defined geofences as well as the geofences visited by individual users, the supply of news and the calls for news. This data is not allocated to the persons of the final customers unless otherwise specified in the framework contract. Furthermore, Bitplaces is entitled to statistically analyse the collected data in abstract form that does not enable individual identification of the final customers (in the following termed **Bitplaces statistics**), and to use these analyses for its own purposes, especially to optimise the service offered by Bitplaces and for advertising purposes.
- (c) Due to its responsibility according to § 3 Subs. 7 BDSG, the customer can, during the contract period and after the end of the contract, demand the correction, deletion, blocking and handing over of the data processed and saved by Bitplaces on its instructions.
- (d) If the customer does not give any specific instructions, Bitplaces saves the data collected during use of the app for a period of 12 months after collection in each case. After the end of this period, but at the latest after the end of the framework contract, the data is automatically deleted. This does not apply to Bitplaces statistics. Bitplaces is entitled to save and process the data collected on the order of the customer on servers operated by third parties, whereby Bitplaces processes and enters the data itself.

10.3 Google Analytics, an advertising service of Google Inc. („Google“), uses this management platform. Google Analytics uses so-called cookies. These are text files saved on the customer's computer that enable an analysis of the use of the website by the customer. The information the cookie generates on the use of the management platform is usually sent to a Google server in the USA and saved there. However, the IP is truncated to the first three IP octets before further transmission. Google uses this information to analyse the use of the management platform, to compile reports on the website activities and to provide the website operator with other services linked with the website and internet use. The customer's IP address determined by Google Analytics is not linked with other Google data. The customer can prevent cookies being saved using a setting in the browser software. However, Bitplaces points out that in this case it may not be possible to use all the functions of the management platform. The customer can also prevent the collection of data generated by the cookie and relating to the use of the website (incl. their IP

addresses) by Google and the processing of this data by Google by downloading and installing the browser plugin available under the following link (<https://tools.google.com/dlpage/gaoptout?hl=en>).

- 10.4 Bitplaces saves and processes the data entered by the user onto the management platform (definition of geofences, news, passwords, account changes). Bitplaces is entitled to log access of the customer to the management platform and to save the corresponding data. The same applies to alteration of the data entered onto the management platform. This data is completely deleted within six months of the end of this contract.
- 10.5 The customer is aware that the management platform uses cookies which are saved on the relevant customer computer when the management platform is used.

11. Obligations of Bitplaces

- 11.1 Bitplaces collects, processes or uses data only within the framework of the order and instructions of the customer.
- 11.2 Bitplaces takes all organisational and technically suitable precautions to secure the protection and integrity of the data collected on the order of the customer and to protect the data against loss and misuse according to the provisions of § 9 BDSG. Bitplaces in particular takes suitable technical and organisational precautions to:
 - (a) Prohibit access by unauthorised persons to data processing equipment used to process and use the personal data (admission control)
 - (b) Prevent data processing systems being used by unauthorised persons (access control)
 - (c) Ensure that the persons authorised to use a data processing system can only access the data to which they are authorised and that during processing, use, or after saving, personal data can not be read, copied, altered or removed without authorisation (access control)
 - (d) Ensure that, during electronic transfer or transport or saving to data media, personal data can not be read, copied, altered or removed by unauthorised persons, and that it is possible to check and establish to which recipients personal data is intended to be sent by data transfer (transfer control)
 - (e) Ensure that it is possible to retrospectively check and establish whether and by whom personal data has been entered into, altered or removed from data processing systems (entry control)
 - (f) Ensure that personal data processed on order can only be processed according to the instructions of the ordering party (order control)
 - (g) Ensure that personal data is protected against inadvertent destruction or loss (availability control)
 - (h) Ensure that data collected for different purposes can be processed separately (separation control)
- 11.3 On request, Bitplaces provides the customer with the details necessary for the overview according to § 4g, Subs. 2, Sentence 1, BDSG.
- 11.4 Bitplaces ensures that the employees occupied with processing the customer's data are obliged to

adhere to § 5 BDSG and have been instructed in the protective provisions of the BDSG. The requirement of data confidentiality according to § 5 BDSG remains in existence even after the end of this contract.

- 11.5 In the case of severe disruption of operations due to a suspected violation of data protection or other irregularities in processing the customer's data, Bitplaces will immediately inform the customer.
- 11.6 You can reach the Bitplaces data protection officer at privacy@bitplaces.com.

12. Obligations of the customer

- 12.1 The customer is responsible for adhering to the data protection provisions that apply to him as the customer during collection, processing and saving of personal data according to this contract. The customer will immediately inform Bitplaces in writing if he identifies violations of data protection provisions or other faults or irregularities in connection with the collection of data within the framework of this contract.
- 12.2 The customer is obliged to maintain a public procedure directory according to § 4g, Subs. 2, Sentence 2, BDSG. The customer is obliged to fulfill the information obligations resulting from § 42a BDSG.
- 12.3 The customer determines the measures required for return of the data media provided and/or the deletion of the saved data after the end of the contract in the form of written instructions to Bitplaces.
- 12.4 If, after the end of the contract, additional costs are incurred due to the handover or deletion, the customer bears these costs. If the customer issues individual instructions that go beyond the contractually agreed scope, the customer also bears the costs that result from this.
- 12.5 THE CUSTOMER ENSURES THAT EVERY FINAL CUSTOMER HAS AGREED TO THE COLLECTION, SAVING AND PROCESSING OF HIS DATA TO THE EXTENT PROVIDED FOR IN THE CONTRACT, AND THAT THIS AGREEMENT COMPLIES WITH THE USUAL REQUIRED FORM. THE CUSTOMER IS EXCLUSIVELY AND SOLELY RESPONSIBLE FOR THE LEGALITY OF THE COLLECTION, SAVING AND PROCESSING OF ALL FINAL CUSTOMER DATA. THE CUSTOMER SHALL INDEMNIFY BITPLACES AGAINST ALL THIRD PARTY OR FINAL CUSTOMER CLAIMS LODGED AGAINST BITPLACES IN CONNECTION WITH THE COLLECTION, SAVING AND/OR PROCESSING OF FINAL CUSTOMER DATA AND SHALL INDEMNIFY BITPLACES AGAINST ALL COSTS THAT ARISE FROM THE DEFENCE AGAINST SUCH CLAIMS.

13. Questions from final customers to the customer

- 13.1 If the customer is obliged according to valid data protection provisions to provide the final customer with information on the collection, processing, use and/or saving of his data, Bitplaces will support the customer in providing this information provided that (a) the customer has requested this from Bitplaces in writing and (b) the customer refunds to Bitplaces the costs incurred for this.
- 13.2 Should a final customer demand from Bitplaces the deletion, correction, blocking and/or handover of his data, Bitplaces is entitled to immediately comply with this demand in as far as it is possible to identify the corresponding final customer data.

14. Checking obligations

- 14.1 Before the start of data processing and at regular intervals thereafter, the customer checks the technical and organisational measures Bitplaces takes to protect the data collected on the customer's order, and documents the results of these checks.
- 14.2 Bitplaces undertakes on written request by the customer to provide all the information necessary for the performance of such a check within a reasonable timeframe.

15. Subcontractors

- 15.1 Bitplaces is entitled to use the services of third parties and also servers operated by third parties to provide the contractually required data processing.
- 15.2 In as far as Bitplaces engages third parties to meet the obligations of Bitplaces, Bitplaces ensures that these third parties are subject to no less stringent requirements with regard to data processing and saving than Bitplaces itself under this contract. This applies in particular to the requirements for confidentiality, data protection and data security.

16. Data transfer to third parties

- 16.1 Bitplaces does not transfer to third parties data that is collected, processed or saved in connection with the use of the management platform or the software.
- 16.2 However, the customer notes that Bitplaces is obliged to pass on inventory data and/or usage data on demand by the responsible authorities to law enforcement, criminal investigation and/or supervisory authorities if and in as far as this is necessary to combat dangers to public safety and peace or to investigate and prosecute crimes.

V. General provisions

Unless otherwise specified in the above Sections, the following provisions apply between Bitplaces and the customer.

17. General warranty

- 17.1 Irrespective of the provisions in Section 5 and Section 8, the following provisions regulate the liability of Bitplaces:
 - (a) The liability of Bitplaces for injuries (i) to life, limb and/or health of the customer and/or his employees as well as the violation (ii) of major contractual obligations is without restriction in accordance with applicable statutory provisions.
 - (b) In all other cases, the liability of Bitplaces is restricted to intent and gross negligence. This applies in particular – but not exclusively – to damage to the customer's data processing equipment due to the use of the management platform, damage due to malfunctioning of the data processing equipment, the loss and/or corruption of data, loss of profit due to a fault in the management platform, malfunctioning of the management platform and/or the customer's app due to a fault in the management platform as well as expenses (of whatever nature) for the remedy of defects caused by the management platform.
 - (c) In the cases described under 5.5 (b), the liability of Bitplaces is limited to a maximum amount of EUR 10,000.
- 17.2 Bitplaces is not liable for faults, damage, data loss or other malfunctions caused by the use of a contractual software that Bitplaces replaced by an update.

- 17.3 The commencement of the period of limitation for all warranty claims by the customer is according to the statutory provisions. The period of limitation is 12 months.

18. Trademark rights

The bitplaces name is not protected by any trademark rights of Bitplaces. Unless expressly stated otherwise in the framework contract, the customer does not acquire any rights under these Terms of Trade or due to the supply/use of the contractual software to use the bitplaces name.

19. Framework contract

- 19.1 The customer's access to the management platform requires the existence of a contract between the customer and Bitplaces.
- 19.2 In as far as a framework contract has been concluded, the provisions of the framework contract have precedence over those of these Terms of Trade in as far as and to the extent that a contradiction exists between the framework contract and these Terms of Trade. Such a contradiction does not affect the applicability of these Terms of Trade. This also applies to the other components of a clause if the contradiction is restricted to one or several isolated components of the clause.

20. Period of validity

The period of validity of these Terms of Trade is linked to the existence of the framework contract. An isolated withdrawal from only the Terms of Trade or only the framework contract is not possible.

21. Other provisions

- 21.1 Neither party is entitled to transfer its rights or the fulfilment of its obligations from this contract without the prior, written consent of the other party, whereby this consent can only be refused for reasonable cause. The prior, written consent of the other party is not necessary for transfer of the rights or the fulfilment of the obligations from this contract to an associated company or in connection with the sale of all major assets of the party in question.
- 21.2 Should a provision of these Terms of Trade be wholly or partially ineffective or unenforceable, this does not affect the validity and enforceability of any of the other provisions of these Terms of Trade. The ineffective or unenforceable provision is considered replaced by the effective and enforceable provision that comes closest to the economic purpose intended by the parties with the ineffective or unenforceable provision at the time of conclusion of the contract. The same applies to unintentional gaps in the contract.
- 21.3 These Terms of Trade are subject to the law of the Federal Republic of Germany excluding conflict of law provisions as well as UN purchasing law. The place of jurisdiction for all disputes in connection with the contractual software is Berlin.