

## General Terms and Conditions for the Mercell Opic services

These general terms and conditions apply to the Mercell Opic Services listed below ('General Terms and Conditions').

- Mercell Opic Anbudsvarsel
- Mercell Opic Markedsovervåking
- Mercell Opic Team (supplementary service for Mercell Opic Anbudsvarsel and Mercell Opic Markedsovervåking)
- Mercell Opic Gjestekonto

Mercell Opic Anbudsvarsel, Mercell Opic Markedsovervåking, Mercell Opic Team and Mercell Opic Gjestekonto are hereinafter referred to collectively as the 'Opic services'. The Customer has ordered one or more of the Opic services listed above from Mercell Commerce AS.

### 1. Parties to the agreement

The parties to the agreement are Mercell Commerce AS (988775320), hereinafter referred to as 'Mercell Commerce' and the party issuing the order, hereinafter referred to as 'the Customer'. 'The Customer' means the legal entity or sole trader specified in the order confirmation. The agreement, including these General Terms and Conditions and the Data Processing Agreement, which is attached to these General Terms and Conditions as appendix 1, are considered as accepted and approved by the Customer when one or more of the Opic services is ordered at Mercell's websites or platforms, or when the order is placed in another way and the Customer has confirmed the order in writing.

### 2. Scope of the agreement

By entering into the agreement with Mercell Commerce, the Customer engages Mercell Commerce to provide information on public procurements in accordance with the user profile/user settings set up for the Customer in accordance with what is included in the Opic service or services ordered by the Customer. The Customer is entitled to search, download and receive this information on public procurements for its own use. All automated downloading of information from Mercell Commerce's Opic services and websites is forbidden. The Customer is liable for checking that invoicing and log-in details registered with Mercell Commerce and user profiles set up are correct. Furthermore, the Customer is responsible for ensuring that all information that the Customer or the Customer's users save, use or otherwise process within the context of any of the Opic services conforms to applicable legislation.

The supplementary service Mercell Opic Team provides features including the ability for the Customer's users to invite other users to access selected procurement notices, including other users linked to the Customer and external users of the Opic services, and to authorise the invited users to cooperate with the Customer's users in those selected procurement notices by reading and writing notes and changing the status and the person responsible, etc. The Customer is aware of the above and of the fact that, in the event that the Customer chooses to invite other external users, the Customer is liable for their use of the Opic service for the specific procurement notice or notices to which the external users were invited to cooperate in the same way as for the Customer's own users.



The Customer receives a non-exclusive right to use, via Mercell Commerce's Opic services, the information and the services described in the order confirmation. The right of use applicable for Mercell Commerce's Opic services and websites applies only to the number of users specified in the order confirmation. Nevertheless, in the event that the user named herein changes duties or ceases to be employed by the Customer, the Customer is entitled to change the user of the Opic service. In that event, the Customer must inform Mercell Commerce before the new user starts to make use of the information and the services. The scope of the agreement is specified in the order confirmation.

### **3. Guest account**

These General Terms and Conditions also apply, as appropriate, to Customers who have what is referred to as a guest account licence (Mercell Opic Gjestekonto). A guest account is a free licence that provides the Customer and its registered users with non-exclusive, limited access only to individual procurement notices in the Opic database for their own use. Under a guest licence, the Customer's users therefore have no access to a summary of all procurement notices and nor can guest account users search procurement notices in what is referred to as logged-in mode. A limited guest account licence allows the Customer's users to activate notifications of updates of a procurement notice or associated procurement documents if the documents have been published in the Opic database. The Customer's guest account users are notified by e-mail of updates linked to a procurement notice for which the user has activated notification of updates as long as the user is linked to an active, valid guest account licence. A guest account user is able to download procurement documents from the procurement notice in the Opic database or by clicking on an external link if the procurement documents are not available in the Opic database. The guest account licence is free and is supplied by Mercell Commerce in its existing state.

### **4. Term of the Agreement, notice of termination, etc.**

The tenure of the Agreement is one (1) year, unless another tenure is agreed, from the order was placed at Mercell's websites or platforms, or confirmed in writing if the order was placed another way. Notice of termination of the agreement must be given in writing to the other party no later than ninety (90) days prior to the expiration of the agreement. Otherwise, the agreement is renewed for one more year.

If the Customer cancels a user licence for any of the Opic services (with the exception of a guest account), Mercell Commerce will downgrade the cancelled user licence to a guest account licence after the term of the agreement has expired, which means that the Customer's users receive a limited guest account in accordance with the provisions contained in section 3, Guest account, above. The same applies to users who free of charge have tested an Opic service, where the user license, after the trial period, is downgraded to a guest account licence. This is to ensure that the Customer can continue to receive notifications if procurement notices for which the Customer has activated notifications of updates are updated after the agreement for the Customer's user licence has expired. Nevertheless, the Customer can always choose to give notice of termination of a guest account licence in writing with immediate effect. In that case, Mercell Commerce will cancel the Customer's guest account licence as soon as possible, no later than 60 days after the notice of termination, and will thereby terminate access to the Opic database by the guest account user specified by the Customer in the notice of termination. A guest account licence otherwise applies for as long as the Customer's user is active within the framework of the service. However, a guest account licence is terminated automatically by Mercell Commerce, without prior notice to the Customer, if the Customer's



guest account user has been inactive (not logged in) in the guest account for a continuous period of over three years.

## **5. Access to the Opic services**

The Opic services are normally available around the clock. Mercell Commerce reserves the right to close down the Opic services for ordinary maintenance. Nevertheless, maintenance will mainly take place during the night and on weekends in order to cause as little impact as possible on the Customer's use of the services.

## **6. Prices, etc.**

Prices for the Opic services included in the agreement are set out in the order confirmation. Value added tax and other general charges are not included in the prices and will be added to the invoice. Mercell Commerce is entitled to adjust the prices once a year.

## **7. Payment conditions**

Payment must be made in advance for each 12 months period against invoice, within thirty (30) days from the invoice date. In the event of late payment, interest on overdue payment is charged on outstanding amounts in accordance with the Swedish Interest Act. Payments made are only refunded if the Customer has suffered damage in accordance with section 8, final paragraph, of this agreement.

## **8. Liability**

The information provided via Mercell Commerce's Opic services and websites has been compiled from public sources. Mercell Commerce has not verified the accuracy or completeness of that information. Hence, Mercell Commerce assumes no liability whatsoever for listed information. Each information provider is liable for listed information. Nevertheless, Mercell Commerce will, as far as possible, correct any inaccurate information as soon as Mercell Commerce becomes aware of the inaccuracy. Mercell Commerce's websites and Opic services may contain links to other websites. Nevertheless, Mercell Commerce has no liability for the availability of such websites, for their contents, for their security or for how they process personal data. Except for in the circumstances described in the next paragraph, Mercell Commerce shall not be liable for any direct or indirect damage or consequential damage relating to the services, including loss of profits or similar, even if Mercell Commerce has been informed of the possibility of such a loss.

Nevertheless, Mercell Commerce is liable for any proven direct damage due to Mercell Commerce's wilful intent or gross negligence. In any case Mercell Commerce's total liability under the agreement is limited to direct losses at a maximum of one (1) annual fee.

## **9. Confidentiality, etc.**

The Customer undertakes to ensure that usernames and passwords are kept secret so that they are not used by unauthorised persons. The Customer undertakes, except by means of any functions deriving from the Opic service, not to disclose or otherwise make available to third parties information received directly from Mercell Commerce or via Mercell Commerce's Opic services and to ensure that



no one other than the Customer's employees gain access to such information. Furthermore, the Customer has no right to any information in addition to what is set out in the agreement. With an exception made for public information, Merzell Commerce and its suppliers hold all rights of ownership and copyright on information received directly from Merzell Commerce or via Merzell Commerce's Opic services and websites.

## **10. Processing of personal data and data processing agreement**

It is important to Merzell Commerce to be able to meet the customers' requirements for compliance with the rules on processing of personal data applicable at any given time. In the relationship between Merzell Commerce and the Customer, Merzell Commerce will hold the role as data controller where Merzell Commerce determines the purpose for which and the means by which personal data is processed. Where Merzell Commerce holds the role as data controller we refer to our Privacy Statement. Where the processing of personal data is on behalf of the Customer, Merzell Commerce holds the role as data processor. A specific data processing agreement has therefore been entered into. It governs the parties' roles and responsibilities in relation to the processing of personal data that takes place under the agreement. The Data Processing Agreement, which forms an integral part of the agreement, is attached to the end of these General Terms and Conditions as [appendix 1](#).

## **11. Force majeure**

If a party is prevented from fulfilling its obligations under the agreement by circumstances over which the party had no control, such as stroke of lightning, labour conflict, lack of electricity supply, fire, provisions issued by an authority, system failure or lack of availability of an external network, this shall constitute grounds for release of contractual obligations included but not limited to postponement of delivery, performance and release from any liability and other possible sanctions.

## **12. Changes and amendment of conditions**

Merzell Commerce reserves the right to change the design and operation of the services. Furthermore, Merzell Commerce is entitled to change the terms and conditions for the agreement, including these General Terms and Conditions, the Data Processing Agreement and the technical and administrative procedures that apply. Significant changes in the terms and conditions will apply thirty (30) days after notice has been given to the Customer and/or the Customer's users in the manner that Merzell Commerce deems appropriate. If the Customer does not accept the terms and conditions as changed by Merzell Commerce, the Customer is entitled, within 30 days from when the Customer or the Customer's users were informed of the changed terms and conditions, to give notice of termination of the Opic services, giving 30 days' notice. Such notice of termination must be given in writing to Merzell Commerce. If the Customer has not made use of this ability to give notice of termination of the Opic services, the Customer is considered to have accepted the changed terms and conditions. Annual fees paid are not refunded in the event that the Customer makes use of the right to give notice of termination in accordance with this section 12.

## **13. Assignment**

The Customer has no right to assign the agreement to another party without Merzell Commerce's prior written approval. Such approval requires that the new party enters into the agreement on the same



terms or on terms changed by Merzell Commerce that are adapted to the new party. Nor has the Customer any right to transfer or disclose usernames and passwords to another party.

#### **14. Premature termination**

If the Customer is in breach of any of the conditions in the agreement, Merzell Commerce is entitled to give notice of termination of the agreement with immediate effect and discontinue access to the Opic services specified in the order confirmation. Furthermore, Merzell Commerce is entitled to give notice of termination of the agreement with immediate effect if the Customer is declared bankrupt, a trustee is appointed for the Customer or a procedure for a composition with the Customer's creditors, a corporate reorganisation or similar is initiated, or if the Customer can otherwise be considered to be insolvent. Annual fees paid are not refunded.

#### **15. Interpretation**

If the contractual documents contain any contradictory information, they apply, unless the circumstances clearly indicate otherwise, in the following order: 1. Order confirmation, 2. Invoice, 3. Data processing agreement, 4. General Terms and Conditions

#### **16. Disputes**

Any dispute concerning the interpretation or applicability of this agreement shall be settled by a Norwegian court in accordance with Norwegian law, whereupon Oslo District Court shall be the court of first instance.

\*\*\*



## **Appendix 1 Data Processing Agreement**

### **Introduction**

This Data Processing Agreement is included in and governs the Processing of Personal data in agreements relating to Opic Services between the Parties (the 'Service Agreement').

### **Definitions**

The definition of Personal Data, Special Categories of Personal Data (Sensitive Personal Data), Processing of Personal Data, Data Subject, Controller and Processor is equivalent to how the terms are used and interpreted in applicable privacy legislation, including the General Data Protection Regulation (GDPR) applicable for this Data Processing Agreement and Europe from 25 May 2018.

### **Scope**

The Data Processing Agreement regulates the Processor's Processing of Personal Data on behalf of the Controller, and outlines how the Processor shall contribute to ensure privacy on behalf of the Controller and its registered Data Subjects, through technical and organisational measures according to applicable privacy legislation, including the GDPR.

The purpose behind the Processor's Processing of Personal Data on behalf of the Controller is to fulfill the Service Agreements and this Data Processing Agreement.

This Data Processing Agreement takes precedence over any conflicting provisions regarding the Processing of Personal Data in the Service Agreements or in other agreements made between the Parties. This Agreement is valid for as long as the Processor Processes Personal data for purposes determined by the Controller.

### **The Processor's obligations**

The Processor shall only Process Personal Data on behalf of and in accordance with the Controller's instructions. By entering into this Data Processing Agreement, the Controller instructs the Processor to Process Personal Data in the following manner; i) only in accordance with applicable law, ii) to fulfill all obligations according to the Service Agreement, iii) as further specified via the Controller's ordinary use of the Processor's services and iv) as specified in this Data Processing Agreement.

The Processor has no reason to believe that legislation applicable to it prevents the Processor from fulfilling the instructions mentioned above. The Processor shall, upon becoming aware of it, notify the Controller of instructions or other Processing activities by the Controller which in the opinion of the Processor, infringes applicable privacy legislation.

The categories of Data Subject's and Personal Data subject to Processing according to this Data Processing Agreement are outlined in Appendix A.

The Processor shall ensure the confidentiality, integrity and availability of Personal Data according to privacy legislation applicable to the Processor. The Processor shall implement systematic, organisational and technical measures to ensure an appropriate level of security, taking into account the state of the art and cost of implementation in relation to the risk represented by the Processing, and the nature of the Personal Data to be protected.



The Processor shall assist the Controller by appropriate technical and organisational measures, insofar as possible and taking into account the nature of the Processing and the information available to the Processor, in fulfilling the Controller's obligations under applicable privacy legislation with regards to request from Data Subjects, and general privacy compliance under the GDPR article 32 to 36.

If the Controller requires information or assistance regarding security measures, documentation or other forms of information regarding how the Processor Processes Personal Data, and such requests exceed the standard information provided by the Processor to comply with applicable privacy legislation as Processor, and imposes additional work on the Processor, the Processor may charge the Controller for such additional services.

The Processor and its staff shall ensure confidentiality concerning the Personal Data subject to Processing in accordance with the Data Processing Agreement. This provision also applies after the termination of the Data Processing Agreement.

The Processor will, by notifying the Controller without undue delay, enable the Controller to comply with the legal requirements regarding notification to data authorities or Data Subjects about incidents.

Further, the Processor will to the extent it is appropriate and lawful notify the Controller of;

- i) requests for the disclosure of Personal Data received from a Data Subject,
- ii) requests for the disclosure of Personal Data by governmental authorities, such as the police

The Processor will not respond directly to requests from Data Subjects unless authorised by the Controller to do so. The Processor will not disclose information tied to this Data Processing Agreement to governmental authorities such as the police, hereunder Personal Data, except as obligated by law, such as through a court order or similar warrant.

The Processor does not control if and how the Controller uses third party integrations through the Processor's API or similar, and thus the Processor has no ownership to risk in this regard. The Controller is solely responsible for third party integrations.

### **The Controller's obligations**

By entering into this Data Processing Agreement, the Controller confirms that:

- The Controller shall, when using the services provided by the Processor under the Services Agreements, Process Personal Data in accordance with the requirements of applicable privacy legislation.
- The Controller has legal authority to Process and disclose to the Processor (including any subcontractors used by the Processor) the Personal Data in question.
- The Controller has the sole responsibility for the accuracy, integrity, content, reliability and lawfulness of the Personal Data disclosed to the Processor.
- The Controller has fulfilled all mandatory requirements and duties to file notifications with or get authorisation from the relevant regulatory authorities regarding the Processing of the Personal Data.
- The Controller has fulfilled its duties to provide relevant information to Data Subjects regarding Processing of Personal Data according to mandatory data protection legislation.





- The Controller agrees to that the Processor has provided guarantees with regards to implementation of technical and organisational security measures sufficient to safeguard Data Subject's privacy rights and their Personal Data.
- The Controller shall, when using the services provided by the Processor under the Services Agreement, not communicate any Sensitive Personal Data to the Processor, unless this is explicitly agreed in Appendix A to this Data Processing Agreement.
- The Controller shall maintain an up to date register over the types and categories of Personal data it Processes, to the extent such Processing deviates from categories and types of Personal Data included in Appendix A.

### **Use of subcontractors and transfer of data**

As part of the delivery of services to the Controller according to the Service Agreements and this Data Processing Agreement, the Processor may make use of subcontractors. Such subcontractors can be other companies within the Merzell group or external third party subcontractors. The Processor shall ensure that subcontractors agree to undertake responsibilities corresponding to the obligations set out in this Data Processing Agreement.

The Controller may request an overview of the current subcontractors with access to Personal Data. Such an overview is included in Appendix B.

The Controller may also request a complete overview and more detailed information about such subcontractors involved in the Service Agreements at any time.

The Controller will be advised when new subcontractors begin to be used or when existing subcontractors cease in the manner that the Processor deems appropriate. If the new subcontractor is demonstrably non-compliant with applicable privacy legislation, and the subcontractor continues to fail to comply with applicable privacy legislation after the Processor has been given a reasonable period to ensure that the subcontractor complies with the rules, then the Controller may terminate this Data Processing Agreement. Such termination may give the right to terminate the Service Agreement, partly or fully, according to the termination clauses included in the Service Agreement. An important part of such assessments shall be to what extent the subcontractor's Processing of Personal Data is a necessary part of the services provided under the Service Agreement. The change of subcontractor will not in itself be considered as a breach of the Service Agreement.

By entering into this Data Processing Agreement, the Controller accepts the Processor's use of subcontractors as described above.

### **Security**

The Processor is committed to provide a high level of security in its products and services. The Processor provides its security level through organisational, technical and physical security measures, according to the requirements on information security measures outlined in GDPR article 32.

Further, the internal privacy framework developed by the Merzell group aims to safeguard the confidentiality, integrity, resilience and availability of Personal Data. The following measures are of particular importance in this regard:

- Classification of Personal Data to ensure implementation of security measures equivalent to risk assessments.





- Assess use of encryption and pseudonymization as risk mitigating factors.
- Limiting access to Personal Data to those that need access to fulfill obligations according to this Data Processing Agreement or the Service Agreement.
- Manage systems that detect, restore, prevent and reports privacy incidents.
- Use security self assessments to analyze whether current technical and organisational measures are sufficient to protect Personal Data, taking into account the requirements outlined in applicable privacy legislation.

### **Audit rights**

The Controller may audit the Processor's compliance with this Data Processing Agreement up to once a year. If required by legislation applicable to the Controller, the Controller may request audits more frequently. To request an audit, the Controller must submit a detailed audit plan at least four weeks in advance of the proposed audit date to the Processor, describing the proposed scope, duration, and start date of the audit. If any third party is to conduct the audit, it must as a main rule be mutually agreed between the Parties. However, if the Processing environment is a cloud-based environment, the Controller gives the Processor authority to decide, due to security reasons, that audits shall be performed by a neutral third party auditor of the Processor's choosing.

If the requested audit scope is addressed in an ISAE, ISO or similar assurance report performed by a qualified third party auditor within the prior twelve months, and the Processor confirms that there are no known material changes in the measures audited, the Controller agrees to accept those findings instead of requesting a new audit of the measures covered by the report.

In any case, audits must be conducted during regular business hours at the applicable facility, subject to the Processors policies, and may not unreasonably interfere with the Processors business activities.

The Controller shall be responsible for any costs arising from the Controller's requested audits. Assistance from the Processor that exceeds the standard service provided by the Processor to comply with applicable privacy legislation, will be subject to fees.

### **Term and termination**

This Data Processing Agreement is valid for as long as the Processor Processes Personal Data on behalf of the Controller according to the Service Agreements.

Upon termination of this Data Processing Agreement, the Processor will delete, anonymize or return Personal Data Processed on behalf of the Controller according to Appendix A. Unless otherwise agreed in writing, the cost of such actions shall be based on; i) hourly rates for the time spent by the Processor and ii) the complexity of the requested process.

The Processor may retain Personal Data after termination of the Data Processing Agreement, to the extent it is required by law, subject to the same type of technical and organisational security measures as outlined in this Data Processing Agreement.

### **Changes and amendments**

If any provisions in this Data Processing Agreement become void, this shall not affect the remaining provisions. The Parties shall replace the void provision with a lawful provision that reflects the purpose



of the void provision.

### **Liability**

For the avoidance of doubt the Parties agree and acknowledge that each Party shall be liable for and held accountable to pay any and all administrative fines which a Party has been imposed to pay in accordance with GDPR. The liability for any and all other violations of the provisions of this Data Processing Agreement or obligations under GDPR shall be governed by the liability clauses in the Service Agreements between the Parties. This also applies to any violation committed by the Processor's subcontractors.

### **Governing law and legal venue**

This Data Processing Agreement is subject to the governing law and legal venue as set out in the Service Agreement between the parties.

\*\*\*\*



## **Appendix A - Categories of Personal Data and Data Subjects**

### *1. Categories of Data Subject's and Personal Data subject to Processing according to this Agreement*

#### *a. Categories of Data Subjects*

Categories of Data Subject include, primarily, the Controller's users, the Controller's contact persons and persons invited by the Controllers users who are given access to the Opic service via a guest account or otherwise.

#### *b. Categories of Personal Data, etc.*

The Data Processor processes, on behalf of the Data Controller, Personal data that the user registers in the Opic services, such as e-mail addresses registered when sharing procurement notices, Personal data registered in text fields such as messages when sharing procurement notices, notes and reminders..

In the profile for the Controller's users, the Processor records basic Personal data for the user such as the user's name, e-mail address and telephone number at the Controller's request. If the Controller is a sole trader, the Controller's personal identity number is also recorded. Additional Personal data recorded includes what procurement notices the user has received in its notifications and what activities the user has carried out in the Opic service (such as which procurement notices a user has read, which documents a user has downloaded etc.), including e-mail communication and chat sessions.

The Personal data is processed by the Processor at the Controller's request in order to allow the Controller's users to use the functions of the service, and to enable communication to take place with the Controller's users as required. In addition, the Processor, at the Controller's request, records the user's activities in the Opic services and on the Processor's websites. The above information also forms the basis for the Processor's ability to supply information to the Controller and the Controller's users within the context of the service at the Controller's request. In addition, in the case of support cases, the Processor may take part of the users registered activities in order to assist the users in the use of the service and to correct any errors in the service.

### *2. Deletion of Personal data*

If the Controller cancels a user licence for any of the Opic services (with the exception of Merzell Opic Gjestekonto), after the expiry of the term of the agreement the Processor will downgrade the cancelled user licence to a guest account licence, which means that the Controller's user receives a limited guest account. When a guest account is closed or deactivated, the Processor deletes or anonymises the Personal data relating to the guest account.

Logs of a user's activities in the Opic service are deleted three years after the logs were created. The notes a user has made in the Opic Service are not deleted, but anonymized when the user's account is anonymized.



### 3. *Return of Personal data*

At the Controller's request Personal data can be returned to the Controller in a machine readable format within 90 days from the request. The processor will charge the Controller for actual costs of obtaining and transmitting the above-mentioned Personal data.



**Appendix B - Overview current subcontractors**

To be able to provide the Opic services, the Processor uses the following subcontractors, which Process Personal data on behalf of the Processor. The specified subcontractors may be changed during the term of the Data Processing Agreement.

<b>Name</b>	<b>Location</b>	<b>Legal transfer mechanism if the sub processor processes personal data outside the EU/EEA</b>	<b>Assisting the Processor with</b>
Mercell Commerce AB	EU/EEA	N/A	Development, sales and support
Mercell Norge AS	EU/EEA	N/A	Sales and support
Visma Labs SIA	EU/EEA	N/A	Development and support
Visma Lietuva UAB	EU/EEA	N/A	Development and support
Visma Consulting AB	EU/EEA	N/A	Development
Visma IT & Communications AS	EU/EEA	N/A	Storage on servers
Digiplex Norway AS	EU/EEA	N/A	Storage on servers
Atlassian Corporation Plc	EU/EEA	N/A	Service desk management software

