

Special Terms of Use - DKV Tachomanager



1. Scope of Special Terms of Use – DKV Tachomanager

The latest version of these Special Terms of Use (hereinafter referred to as "Tachomanager Terms and Conditions") shall govern business relations between DKV EURO SERVICE GmbH + Co. KG of Vogelsanger Weg 49, 20270 Düsseldorf, Germany ("DKV") and the DKV customer in matters relating to the use of the DKV Tachomanager service and shall to that extent supplement the latest version of DKV's Standard Terms and Conditions (hereinafter referred to as "DKV's Standard Terms and Conditions").

2. Scope of DKV Tachomanager service

- a. The service offered by DKV relates to an application used to upload driver and vehicle data via a secure Internet link onto a central web server where it is stored for 24 months and is available for analyses. A separate function provides a reminder to archive driver and vehicle data.
- b. The functions offered include:
 - » the facility to upload driver and vehicle data onto a central web server via a secure Internet link;
 - » storage of uploaded data in its original data format for at least 24 months;
 - » deletion of uploaded data stored for longer than 24 months unless the customer specifically instructs otherwise;
 - » editing of driver and vehicle data in a central database;
 - » constant access to data by DKV customer;
 - » the facility to produce analyses for the company;
 - » the facility to print off analyses;
 - » display of all data for the past month relevant to the billing process.

3. Interruptions in and disruption to the service

- a. Alterations, changes and additions to the software underlying the service and measures designed to prevent, identify and remedy malfunctioning may where necessary for technical reasons give rise to a temporary interruption in or disruption to the service. DKV shall endeavour to limit interruptions in and disruption to the service to a maximum of 5 hours per week and shall try to restrict such disruption to the period between 10 pm and 6 am and to Sundays.

DKV shall endeavour to offer use of and access to the service as follows:

System availability – Maintenance – Support for the DKV Tachomanager

System availability	Description	Standard
Available time	7 days x 24 hours	99,0 %

Maintenance	Standard
Potential maintenance hours	Tuesday 06:00-08:00
	First Wednesday in the month from 20:00 – 00:00

Support/Service Desk(English)	Service availability
	Office hours (working days Monday– Friday, 08:00-20:00, Saturday 8:00 – 16:00) Outside of these hours problems can be reported by email or fax. Problems reported by email or fax which are received outside of the service hours, will be handled as on the next working. day .

- b. In the event of an interruption in service, the DKV customer shall be notified in an appropriate manner (for example through a message on screen or by e-mail).
- c. If the system is used fraudulently or in a manner that might damage it and in particular affect its reliability or credibility or not be appropriate to its intended purpose, DKV reserves the right to take any measures necessary to put an end to such use and in particular to suspend access to the service temporarily or entirely.

4. Application procedure

- a. The service outlined in Clause 2 shall not be available until the DKV customer has submitted an application via the online form and such application has been accepted by DKV. Upon acceptance, a user account shall be set up for the DKV customer and a password and where appropriate a DKV customer number (user data) communicated. These details must be entered to obtain access to and use the user account and therefore the services covered by this Agreement.
- b. In this connection, the DKV customer undertakes:
 - » upon submitting an application to provide full, accurate and relevant information and to take immediate action to correct the details provided as appropriate should changes subsequently occur - this automatically and without specifically being requested to do so;
 - » to treat the user data as confidential and to do everything he can to prevent third parties acquiring or using such data directly or indirectly;
 - » not to leave his user data unattended and to assume responsibility for the use thereof even if the user data is abused, eg. following theft or other loss;
 - » in the event of loss, theft or other leaking of his user data or if he suspects that his user data is being abused to notify DKV of this fact immediately and to alter the password immediately. The DKV customer may also contact DKV to request suspension of access to DKV Tachomanager particularly if altering his password proves impractical or inadequate to preventing abuse on the part of a third party;

- » not to choose a password that may easily be guessed by a third party (such as for example a date of birth, own name, name of a family member or his company, etc.) and to alter the password regularly.
- c. Subject to observance of the principles outlined above, the DKV customer may at any time alter the user data used by him on first applying to use the service.
- d. If the DKV customer provides an e-mail address, all communications sent to him at this address shall be deemed transmitted. The DKV customer undertakes to check his e-mail box regularly and if his e-mail address changes or is cancelled to notify DKV immediately of such change. The DKV customer hereby agrees to DKV using the e-mail address to send him business communications.

5. Use of DKV Tachomanager

- a. The DKV customer may authorize another person to use this service in his name. In such an event, he undertakes to notify that individual of any obligations accruing to him through use of DKV Tachomanager and to seek his written undertaking to meet these commitments. The DKV customer shall bear unlimited liability for any consequences arising directly or indirectly from the use of the service by this authorized individual.
- b. The DKV customer hereby confirms that he has been informed that DKV reserve the right to refuse access to a user account using user data previously provided if access has already taken place via a different computer using the same user data.
- c. The DKV customer shall ensure that he uses the service in a proper manner with due regard to the Tachomanager Terms and Conditions and any guidelines received whilst using the service covered by this Agreement. The DKV customer undertakes in particular:
 - » to use the service provided regularly in order to ensure trouble-free operation of the system;
 - » to acquire and receive at his own expense the hardware and software required for access to and correct use of the service;
 - » in the event of a malfunctioning of the service or a problem with its use to notify DKV of this fact immediately. Insofar as they are technically able, DKV shall make every endeavour to remedy the fault within a reasonable period of time;
 - » to install and use an anti-virus programme and to keep such programme up-to-date.

6. Rights of use

- a. Copyright to the software underlying the service is owned by E.Novation BTC GmbH of Freiheitstraße 120B, 15745 Wildau. This company has accorded DKV the right to grant sub-licences.
- b. The DKV customer is hereby granted the simple right to use the software underlying the services covered by this Agreement. This right is neither assignable nor an exclusive right and shall be limited to the period the customer uses DKV Tachomanager.

- c. The DKV customer undertakes to observe the copyright and in particular not to make any unauthorized copies of the software. The customer may copy the software covered by this Agreement if such action is required for use of the software. Necessary copying shall include loading the software into the main memory but not installing or storing the software - even temporarily - on data carriers (hard disks etc.) of the hardware used by the customer. The customer may not make any other copies by for example printing off the programme code or photocopying the user manual. The customer's authority to copy the programme code under the conditions specified in Art. 69e Para. 1 Copyright Act remains unaffected.
- d. The designations 'DKV', 'DKV Tachomanager' and 'DKV EURO SERVICE' and other protected trademarks may not be used without DKV's prior written consent.

7. Fees and payment terms

- a. The DKV customer does not need to pay to apply to use the services covered by this Agreement.
- b. The DKV customer undertakes to pay three (3) Euros per vehicle per month for the services covered by this Agreement.
- c. All prices quoted are net prices and exclude VAT at the current statutory rate.
- d. The services covered by this Agreement shall be invoiced once a month via the DKV Card billing system.

8. Data protection

- a. DKV guarantees observance of statutory provisions on data protection, particularly the German Telemedia Act and the German Data Protection Act.
- b. DKV hereby advises the DKV customer that use of the services covered by this Agreement necessitates ascertainment, processing and use of his personal details. This includes in particular the details provided by the DKV customer in his application, when accessing the website and when using the service. The DKV customer hereby agrees that his details shall be stored, transmitted, deleted and stopped by DKV and third parties acting on the latter's behalf where necessary for performance of the Agreement subject to weighing up the customer's legitimate interests.
- c. The DKV customer may revoke his agreement to storage and processing of data at any time. In such an event, the customer may not continue to use the services covered by this Agreement.

9. Duration and termination

- a. The DKV Tachomanager Agreement is concluded for an unspecified period and may be terminated by the DKV customer at any time by suspending use of DKV Tachomanager.
- b. DKV is allowed to suspend the service at any time subject to observance of a 4 week notice period.

- c. The parties' right to terminate the Agreement on important grounds remains unaffected.
- d. For DKV, important grounds for terminating this Agreement shall arise in particular if
 - » the DKV customer is guilty of sustained failure to meet the commitments arising from Clause 4 b) and Clause 5 c) of this Agreement;
 - » despite a reminder and the setting of a deadline the DKV customer fails to meet his commitment to pay the charges specified in Clause 7 of this Agreement.
- e. Once the Agreement has ended, DKV shall not be obliged to store the DKV customer's details for more than 24 months. The DKV customer shall himself be responsible for taking any backup action necessary after this time.

10. Changes to Tachomanager Terms and Conditions

- a. DKV shall notify the DKV customer in simple text form without signature of any amendments to these conditions although there shall not be any obligation to send or otherwise communicate individual revised conditions or a complete revised version of the conditions; notification that changes have been made shall suffice. Unless the DKV customer opposes the amendment in writing within one month of notification of such amendment, he shall be deemed to agree to the amendment; DKV shall draw attention to this fact when communicating amendments.
- b. DKV reserves the right to assign the Agreement with all rights and obligations to a company of their choice. If the DKV customer does not oppose such assignment in writing within four weeks of notification of the assignment, he shall be deemed to agree to the assignment.

11. Closing provisions

- a. If parts of these Tachomanager Terms and Conditions are or become invalid or the Tachomanager Terms and Conditions prove to contain a loophole, this shall not affect the validity of the remaining provisions. The invalid provision shall be replaced or a loophole filled by a clause that comes as close as possible to coinciding with what the parties would have wished had they considered the point in question.
- b. The laws of the Federal Republic of Germany shall apply to the exclusion of international private law (choice of law rules). The UN Convention on Contracts for the International Sale of Goods (CISG) and any other international conventions shall not apply even if they have previously been incorporated into German law. In the event of a legal dispute, DKV may if they so wish choose to have a legal dispute settled in accordance with the laws in force in the customer's country.
- c. Where the customer is a business or legal entity under public law or a special Federal Government asset, the courts of Düsseldorf shall have jurisdiction to settle any disputes arising from the business relations - even after they have ended. The said courts shall have sole jurisdiction to settle any claims filed against DKV; these and other jurisdictions may settle claims filed against the DKV customer.

- d. These Tachomanager Terms and Conditions drawn up in German shall apply equally to business relations with foreign customers. A translation of such Terms and Conditions in English or the language of the customer's country of origin should help to assist the customer's understanding. The German text shall always take precedence in the event of a dispute about interpretation.
- e. The current version of DKV's Standard Terms and Conditions shall also apply. If the provisions of the Tachomanager Terms and Conditions conflict with those of DKV's Standard Terms and Conditions, the Tachomanager Terms and Conditions shall take precedence.

As at: 03/2008