TERMS OF SERVICE

**1. Introduction**

These are the general terms of our relationship with you. They cover any transactions where we provide services to you. Under these terms:

* we are the Service Provider – Dixpamo GmbH (Registration number: 2023/0044442/01) (hereinafter also referred to as “The Company”).
* we provide services - you use our services when you visit and use any of the Portals, applications, services, instant messaging services, administrative tools, or order our goods or services as a customer either as a natural person or a business (collectively “Services”), regardless of how you access or use them
* you are the customer (hereinafter referred to as ‘User’) - someone who use our Online-shop and/or Services
* The use of our Online-shop and/or Services is entirely voluntary and the user hereby respectively indemnifies and holds harmless The Company, their successors and assigns, their respective officers, directors, employees, servants, and agents from and against any and all claims, losses, liabilities, suits, judgements, expenses, damages including consequential damages, penalties, fines or indemnity payments of whatsoever kind and nature arising from or in any way connected with the use of our Online-shop and/or Services and/or information contained therein.

Furthermore, the Service Provider does not take responsibility for the content, products, and or services advertised by the advertisers on our Online-shop and/or Services.

An order is a separate document or form that contains the commercial terms of each specific transaction and incorporates these terms as described in section 4 below.

**2. Agreement**

2.1 Composition.

The agreement consists of these terms of service and any orders or any other specific terms applicable to the services.

2.2 Definitions.

In the agreement:

‘business day’ means any day other than a Saturday, Sunday, or holiday (including a public or bank holiday) in the jurisdiction where we are organised

‘business hours’ or ‘office hours’ means our normal business hours on business days

‘day’ means a day counted from midnight to midnight, including all days of the month, Saturdays, Sundays, and public holidays

‘sign’ means the handwritten signature or an electronic signature that the parties agree to use, of each of the parties' duly authorised representatives

‘we’, ‘us,’ or ‘our’ means the service provider

‘writing’ means the reproduction of information or data in physical form or any mode of reproducing information or data in electronic form that the parties agree to use, but excludes information or data in the form of email

'you' or 'your' means the customer

2.3 Interpretation. The following rules apply to the interpretation of the agreement:

* reference headings - clause and subclause headings are for reference only and do not affect interpretation
* non-exhaustive lists - whenever a clause lists specific examples or items following a listing word, such as 'including', 'includes', 'excluding', or 'excludes', they will not limit its scope
* undefined words or phrases - all words or phrases that the agreement does not define have their ordinary English meaning
* references to enactments - references to any enactment include it as re-enacted, amended, or extended
* references to people - references to a person includes a natural and juristic person
* references to parties - references to a party includes their successors or permitted assigns
* number of days - when any number of days is prescribed, the first day will be excluded and the last day included
* no interpretation against the draftsman - the rule of construction that an agreement must be interpreted against the party responsible for its drafting or preparation does not apply
* time calculations - the parties will use GMT +1 to calculate any times

2.4 Departure. These terms apply to all our customers and are not generally open to negotiation for reasons of consistency. Should the parties negotiate any departure from these terms, they will record that departure in the relevant order or other specific terms.

2.5 Conflict. If there is a conflict of meaning between these terms and any word or phrase in an order or other specific terms, the meaning in the order or specific terms will prevail in respect of the relevant services.

**3. Duration**

3.1 Commencement. These terms start whenever you accept them by:

* doing so explicitly - such as by checking a checkbox saying that you do or are agreeing to an order that incorporates them by reference
* using the Portals or Services in any way - such as by accessing them
* or exercising any rights granted to you under the agreement

3.2 Automatic renewal. If an order involves a subscription, the agreement will continue automatically from the end of the initial term or subsequent automatic renewal period for an automatic renewal period equivalent to the initial term.

3.3 Renewal termination. Either party may terminate the agreement before the end of the initial term or subsequent automatic renewal period by giving the other party at least 30 calendar days prior written notice.

**4. Orders**

4.1 Placing orders: You place orders with us whenever you order or start using the Portals or Services. These orders are offers to us to buy premium-feature access to our Portals and Services.

4.2 Capacity and authority: You promise that you have the legal capacity and authority to enter into the agreement.

4.3 Invitation to do business: Marketing is merely an invitation to do business and we only conclude the agreement when we actually provide the services to you. This happens when we accept your offer.

4.4 Cancellations: We may cancel any order, but we will refund any money you have paid in relation to that particular order if we do.

4.5 Time and place: We conclude the agreement when we accept the order and where we are domiciled when we do.

4.6 Separate agreements: Each order is a separate agreement, but you are deemed to have breached all of them if you breach one of them.

4.7 Credit Card Acquiring and Security: Credit card transactions will be acquired for the Service Provider via Dixpamo GmbH who are the approved payment gateway for Revolut Ltd. Revolut Ltd uses the strictest form of encryption, namely Secure Socket Layer 3 (SSL3) and no credit card details are stored on the Portal. Users may go to <https://www.revolut.com/> to view their security certificate and security policy.

4.8 Customer Details Separate from Card Details. Customer details will be stored separately from card details which are entered by the client on Revolut secure site.

4.9 Merchant Outlet Country and Transaction Currency. The merchant outlet country at the time of presenting payment options to the cardholder is the Republic of Mali. Transaction Currency is CFA or Dollar.

**5. Services**

5.1 Right. We grant you a right to use the services subject to the following limitations:

* duration of agreement - you may only use the services for the duration of the agreement
* limited to terms - you may only use the services according to these terms
* non-exclusive - we may allow anyone else to use the services
* non-transferable - you may not transfer the right to anyone else
* specified purposes - you may only use the services for the specified purposes that we've communicated to you in writing from time to time
* and any other limitations agreed between the parties in writing

5.2 Breach. We may cancel your right if you breach the agreement.

**6. Online services**

6.1. Basis. We provide the online services to you on the following basis:

* you give us permission to monitor how you use them for security and stability purposes
* you agree that our records are undisputed evidence of the services provided to you

6.2 Access conditions. We will only provide online service access to you or your authorised users (where you are a juristic person) on the conditions that you or each one of them will:

* accurately provide us with any information that we ask for on registration or account creation
* create or have the necessary credentials (such as a username and password) assigned to them on registration or account creation
* look after their credentials and not give them to anyone else
* not interfere with or introduce any malicious software into the online services or otherwise misuse them
* be responsible for any activity that happens under their account, even if someone else was actually acting under their credentials
* have the necessary infrastructure, equipment, and software to access the online services
* abide by the agreement and any policies that we communicate to them in writing
* and any other conditions agreed between the parties in writing

6.3 Availability. We will do our best to make the online services available at all times, however we cannot guarantee that they will always be available. We may make them unavailable for scheduled and emergency maintenance.

**7. Your data**

7.1 Definition. Your data is any data belonging to you or your customer that:

* you or your customer (or any third party on your behalf) provide to us
* we generate, process, or supply to you or your customer in providing the services

but excludes any derived data that we create for our own purposes or which is proprietary or confidential to us or our third-party contractors.

7.2 You own it. You own all your data, but give us a right to use it to provide the services when you provide us with access to it.

7.3 We do not own it. We do not own any of your data. However, we do own our derived data. Your data does not include any derived data that we create for our own internal purposes. Derived data is any of our own data that we create from your data, such as through aggregation, de-identification, or anonymisation.

7.4 Responsibility. We take the protection of your data very seriously and will always do everything in our power to protect it. To that effect, we will:

* comply with all relevant laws that affect your data
* implement and maintain effective security safeguards that includes, but is not limited to administrative, technical, and physical safeguards, and appropriate technical and organisational measures, in each case, adequate to insure the security and confidentiality of personal information,
* protect against any anticipated risks to the security or integrity of personal information,
* protect against unauthorized access to or use of personal information,
* protect personal information against unlawful processing or processing otherwise than in accordance with these terms of service,
* protect against accidental loss, destruction, damage, alteration or disclosure of personal information have due regard to leading industry information security management codes of practice, where appropriate
* have an individual to oversee compliance with relevant data protection laws;
* not sell, dispose of, or encumber any of your data or try to do any of those things
* be able to identify any of your data separately from any other data under our control
* not disclose any personal information from your data, other than in terms of the agreement.

In the event of any actual, suspected, or alleged security breach, including, but not limited to, loss, damage, destruction, theft, unauthorized use, access to or disclosure of any personal information, we undertake to:

* notify you as soon as practicable after becoming aware of such event;
* provide the information regarding the breach which we acknowledge and have in our possession to allow you to ascertain what has occurred and which personal information has been affected.
* promptly take whatever action is necessary to minimise the impact of such event and prevent such event from recurring.

The user hereby consents to Junk Mail sharing the personal information as provided for herein cross border. Should the user’s personal information be shared cross border, the personal information will not be subject to less protection than it enjoys in terms of the local laws.

We have data operator agreements in place to ensure that the operator maintains the security measures required by law, in general this requires the operator to establish and maintain confidentiality and security measures to ensure the integrity of the personal information.

7.5 Subcontracting. Subcontracting involves engaging a subcontractor outside our organisation to do work as part of providing the services. We may subcontract work involving your data, provided that:

* where we have already subcontracted or are in the process of subcontracting work involving your data prior to the conclusion of this agreement, we inform you in writing of any pre-existing subcontractors
* where we wish to engage a subcontractor after the conclusion of this agreement, we get your written permission to subcontract work involving your data beforehand
* we notify you in writing of: (i) the purpose of sharing your data with the subcontractor; and (ii) how we have carried out due diligence on them
* we do so only through a written agreement with the subcontractor which imposes the same obligations on them as are imposed on us
* we remain fully liable for any processing of your data under the agreement by our subcontractor

7.6 Location. Your data will remain wherever we place it initially, unless we have to transfer it to another country to comply with our obligations to you. We will ask for and get your consent before OR You consent to us transferring it to our group of companies, associated companies, service providers, or agents who may be located in other countries for the purpose of providing the services.

7.7 Access and Deletion Requests. The right to be forgotten in many countries allows for deletion of personal information that is “inaccurate, irrelevant, excessive, out of date, incomplete, misleading or obtained unlawfully.”

Please to the appropriate local official information for more information on how to request access or deletion of your personal information.

**8. Confidential information**

8.1 Definition. Confidential information is any information that the parties share with one another in terms of this agreement with the intention that the other party should keep it secret, such as personal information, business records, or customer details.

8.2 Responsibilities. Each party will keep any confidential information it receives from the other party under the agreement confidential and the receiving party will:

* protect the other party's interests
* only use it to comply with their responsibilities under the agreement
* only give it to their employees or agents that need it (and only as much as they need)
* use reasonable security procedures to make sure their employees or agents keep it confidential
* get promises of confidentiality from those employees or agents who need access to the information
* not reveal the information to anyone else
* not use it for any purpose other than under this agreement

8.3 End of agreement. The parties will give back to the other all confidential information of the other that they have at the end of the agreement, unless:

* the other party agrees that they may destroy or retain it instead
* it is lawfully in the public domain
* someone else (a third party) who is allowed to reveal it gives it to them
* someone gives it to them to comply with a court order or other legal duty

8.4 Indemnity. Each party indemnifies the other against any loss or damage that the other may suffer because of a breach of this clause by a party or its employees or agents.

8.5 Survival. This clause about confidential information is separate from the rest of this agreement and remains valid for five years after the end of this agreement.

**9. Marketing**

9.1 Subscription / Opt-in. By making use of our Online-shop and/or Services (we collect your data as described in section 5 of our Privacy Policy) you become our customer and can thus be marketed to on an opt-out basis. This means we may contact you via email, telephone, SMS/text messages, postal mail, social media platforms, instant messaging systems, and via push notifications (collectively “Marketing Channels”) with marketing material until you opt-out.

9.2 Direct Marketing obligations as prescribed by the law

9.2.1 The Company may only approach a data subject taking into account the below:

* Their consent is required;
* If they have not previously withheld consent; and
* The Company may only approach a data subject once.

9.2.2 How does The Company obtain consent? The subject’s consent must be requested in the following ways:

* Opt-in on The Company website;
* Manual opt-in form;
* In The Company client contracts; and
* In written consent either via a signed document or in email.

9.2.3When is processing of personal information for direct marketing purposes allowed? Processing the personal information of a customer or data subject is acceptable if:

* The contact details of the client were obtained when a sale of a product or service is made;
* For the purpose of direct marketing similar products that is in the client’s best interest;
* For the primary purpose of marketing only; and
* The client or data subject has not refused to receive communication or has previously opted out.

9.3 Unsubscribe / Opt-out.

9.3.1 You can opt-out from marketing for a specific email address by clicking the Unsubscribe link on marketing related emails you received (not including emails generated by our Portals or Services with relation to your direct use of our portal, i.e. responses to adverts placed).

9.3.2 You can opt-out from SMS marketing (free of charge) by sending STOP to +4915158004263.

9.3.3 You can opt-out from Push Notifications by removing the website you give permissions to in the Notification settings of your browser.

9.2.4 You can manage your Cookie preferences by clicking here: Manage your Cookie preferences.

9.2.5 Please note that it could take up to three workdays for opt-out requests to take full effect.

9.4 Manage Preferences. Update your interests and subscriptions by sending an email to support@mandecars.com.

9.5 Complaints Procedure. If you feel that you received communication from us that you did not consent to, or if you suspect that your information might have been accessed without your permission, we ask that you follow our simple complaints procedure on the following link. Click/tap here to read it.

**10. Changes**

10.1 Ownership. We or our third-party licensors own all proprietary rights in our services and we or they may prosecute you for any violations of those rights.

10.2 Our technology. Our technology is anything that we have or acquire rights in and may use to perform our obligations under the agreement.

10.3 Retention of rights. We own all intellectual property rights in our technology, and you may not use those rights without our permission. You do not acquire any rights in our technology if we use it to provide services to you.

10.4 Our trademarks. Our trademarks are our property, and you may not use them without our permission. All other trademarks are their respective owners' property.

10.5 Restrictions. You may not change, hire out, reverse engineer, or copy the services without our permission.

10.6 Your intellectual property. You grant us a non-exclusive and royalty-free license to use any of your trademarks and copyright works which you deliver to us for the purposes of providing the services. We may not use them for any other purpose without your prior written permission. The license expires automatically when the agreement ends. You retain all rights in your trademarks and copyright works despite this license.

**11. Non-solicitation**

You will not contract with any of our personnel, other than through us, who were involved in providing services under an order for the duration of that order or for 12 calendar months after its termination.

**12. Fees and payment**

12.1 Payment. You will pay us the fees on the due date in the manner agreed between the parties in writing. You may not withhold payment of any amount due to us for any reason.

12.2 Late payment. Additional charges agreed between the parties in writing apply to any payment we receive after the due date and you must pay them to us on demand. We may stop providing any services until you have paid all amounts due.

12.3 Interest. Overdue amounts on any outstanding invoice will bear interest for our benefit from its due date until you pay it at whichever rate is higher between:

* 2% above the prime (or prime lending) rate
* Or at least 10%

Interest will be payable on a claim for damages from when the damages were suffered.

12.4 Appropriation. We may use any money you pay us to settle your indebtedness under the agreement, despite any particular reason you may have paid it to us.

12.5 Certificate. We may appoint an accountant to sign a certificate that will be proof of the amount due by you and the date on which it is payable.

12.6 Tax. All fees exclude any tax (unless indicated otherwise), which you will pay where applicable in addition to the fees.

12.7 Payment profile. We may provide any registered credit bureau with information about your payment of amounts.

**13. Our warranties**

13.1 Service warranties. We warrant that we will:

* employ enough trained personnel with the knowledge and expertise to provide the services
* use reasonable efforts consistent with prevailing industry standards to maintain the services
* provide the services in accordance with all applicable laws

13.2 General warranties. We warrant further that we:

* have the legal right and authority to perform our obligations under the agreement
* will not knowingly introduce any malicious software into your systems

**14. Disclaimer of warranties**

14.1 Disclaimer. You use the services at your own risk and we disclaim all other warranties to the extent allowed by applicable law. We are not liable for any defect that you cause.

14.2 Exclusion of liability. Despite our warranties, we are not liable for any defects that your negligence, failure to follow our instructions, or misuse cause.

**15. Your warranties**

15.1 Agreement warranties. You warrant that:

* no one has induced you to enter into the agreement by any prior representations, warranties, or guarantees
* you are not breaching any other agreement by entering into the agreement

15.2 Indemnity. You indemnify us against any claim for damages by any third party resulting from a breach of your warranties, including all legal costs. Legal costs means the costs that a lawyer may recover from their client for their disbursements and professional services if permissible under applicable law.

**16. Limitation of liability**

16.1 Direct damages limited. We are only liable to you for any direct damages that the services may cause up to the total amount of fees that you have already paid us for them.

16.2 Indirect damages excluded. We are not liable for any other damages or losses that the services may cause you.

16.3 Your default. We are not liable for any damage or loss that your breach, misrepresentation, or mistake causes.

**17. Breach and termination**

17.1 Breach. If either party:

* does not fix a breach within seven days of receiving written notice from the other party
* breaches the agreement materially twice or more in six months
* is bankrupt or has some legal disability
* takes steps to close or is closed down (such as becoming insolvent or entering sequestration)
* makes any settlement or arrangement with their creditors
* or fails to pay a court order against themselves for a significant amount within 21 days

then the other party may:

* make the party comply with the agreement
* or immediately cancel the agreement in writing and claim damages from the other party, including fees already due

17.2 Suspension. We may immediately suspend your right to use the services if:

* you try to gain unauthorized access to them
* we decide that your use poses a security threat to us or another user other than you
* there is evidence of fraud on your account
* or we believe you are using them for an illegal purpose or in ways that infringe a third party's rights

**18. Termination**

18.1 Termination for good cause. We may need to terminate the agreement immediately if we:

* discontinue or stop providing the services
* believe providing the services could burden or pose a risk to us
* have to terminate to comply with a law
* or determine that providing the services has become impractical

If we need to terminate, we will give you as much notice as reasonably possible in writing.

18.2 Termination for convenience. You may terminate the agreement or a specific order on at least 60 days written notice to us.

18.3 Duties on termination. We will stop providing the services, you will no longer be able to access them, and we may erase your data on termination, cancellation, or expiry of the agreement.

**19. Effect of termination**

19.1 Acceleration. All amounts due to us for the services become due and payable on termination, cancellation, or expiration of the agreement

19.2 Assistance. We may provide you with post-termination assistance (such as data retrieval) subject to additional fees and conditions, but are not obliged to.

19.3 No expectation. The agreement does not create any expectation of continued service, agreement renewal, or any further agreement between the parties.

**20. General**

20.1 Governing law. Mali law governs this agreement.

20.2 Resolving disputes. Either party may inform the other in writing if there is a dispute. The parties must first try to negotiate to end the dispute, then enter into mediation if negotiation fails, and finally go to arbitration if mediation fails. If they go to arbitration, they will agree in writing on a recognized and appropriate forum for arbitration that is accessible to both parties.

20.3 Mediation. If negotiation fails, the parties must refer the dispute to mediation under the Mali law

20.4 Arbitration. If mediation fails, the parties must refer the dispute within 15 business days to arbitration (including any appeal against the arbitrator's decision) under Mali Law. The arbitration will be held in French in Bamako. The parties will agree and appoint one arbitrator. If the parties cannot agree on the arbitrator within 10 business days after the referral, the appropriate Authority will appoint the arbitrator.

20.5 Jurisdiction. You consent to the jurisdiction of the Magistrate's Court in respect of any action or proceedings that we may bring against you in connection with this agreement, even if the action or proceedings would otherwise be beyond its jurisdiction without prejudice to our right to institute any action in any other court having jurisdiction.

20.6 Notices and domicile. The parties will send all notices to each other’s email addresses and choose their respective street addresses as their service addresses for all legal documents. Our email and street addresses are available on our Online-Shop, while you provide your email and street addresses to us when concluding the agreement. The parties may change either address on 14 calendar days written notice to the other.

20.7 Beyond human control. Neither party is responsible for breach of the agreement caused by circumstances beyond human control, but the other party may cancel the agreement on written notice to the other if the circumstances persist for more than 60 calendar days.

20.8 Assignment. You may not assign the agreement to anyone. We may assign it to any successor or purchaser of our business or some of our assets.

20.9 Relationship. The agreement does not create an employment relationship between the parties.

20.10 Entire agreement. The agreement is the entire agreement between the parties on the subject.

20.11 Changes. We will notify you of any changes to the agreement by email. Those changes will only apply to future services orders. If you do not agree with the changes, you must stop using the services. If you continue to use the services following notification of a change, the changed terms will apply to you and you will be deemed to have accepted them.

20.12 Waiver. Any favor we may allow you will not affect any of our rights against you.

20.13 Severability. Any term that is invalid, unenforceable, or illegal may be removed from the agreement without affecting the rest of it.