

# **Terms of Use for MyPTV**

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Short title	Terms of Use MyPTV
Version of contract template:	1.3.0 dated 2024-11-04

# 1 General provisions

- 1.1 These terms of use for cloud services ("**Terms of Use**") apply to the PTV Cloud Services on MyPTV and are made by and between PTV Planung Transport Verkehr GmbH, Haid-und-Neu-Strasse 15, 76131 Karlsruhe, Germany ("**PTV**") and such entity ("**Customer**") that received and/or uses PTV Cloud Services and/or data provided by PTV and that entered into an agreement on the delivery and use of such PTV Cloud Services with PTV or an affiliate, reseller or other contractual partner (each a "**Third-Party Distributor**") of PTV, provided that these Terms of Use have become part of the contract.
- 1.2 PTV shall notify the Customer of any changes to the Terms of Service in writing, by facsimile or email. Where the Customer does not object to such changes within six (6) weeks from the date of receipt of the notice, the changes are deemed to have been consented to. In the event of any amendment to these Terms of Service, the Customer's attention is specially drawn to its right of objection and to the legal consequences of silence. In the event that the Customer objects within the six-week period, the contractual relationship shall be continued under the previously applicable conditions. If an objection is raised, PTV shall be entitled to terminate the contractual relationship existing with the Customer with one (1) months' notice. If the Customer has acquired access to the PTV Cloud Service from a Third-Party Distributor, the Third-Party Distributor is obliged to inform the Customer about the changes to these Terms of Use.
- 1.3 Terms and conditions of the Customer do not apply regardless of whether or not PTV expressly objects to them in a particular case.
- 1.4 Not all contractual documents can be provided in the respective national languages. The Customer agrees to contractual documents in English language.
- 1.5 All third-party providers and suppliers of PTV that are involved in the provision of services are included in the protection provided by this contract. The Customer or partner of PTV shall indemnify these third-party providers and suppliers against claims by third parties resulting from a breach of this contract, in particular these Terms of Service.

## 2 Definitions

- 2.1 "**Customer**" is an entrepreneur within the meaning of sec. 14 BGB (German Civil Code) who has purchased access to the PTV Cloud Service and uses it for its own business purposes and is therefore a commercial customer. The Customer is an end user.
- 2.2 "**Data**" is digital content which PTV makes available to the Customer, including but not limited to geographical data, traffic data, additional data, point-of-interest and geodata.

- 2.3 **“PTV Cloud Service”** is cloud-based software and Data provided by PTV to the Customer via the Internet in a public cloud, e.g., by means of an API.
- 2.4 **“Product Description”** contains the technical specifications and functionalities of the PTV Product as amended from time to time, available for each PTV Product at [MyPTV Product Descriptions](#).
- 2.5 **“SLA (Service Level Agreement)”** is the specification of the quality criteria (in particular but not limited to response times and availability) for recurring services to be provided by PTV for paid PTV Cloud Services.
- 2.6 **“Subscription”** is the conclusion of a subscription for the time-limited use of a PTV Cloud Service.
- 2.7 **“Third-Party Licenses”** means the licenses included in the PTV Cloud Service, which PTV has legally acquired from third parties and which include specific terms and conditions to PTV and to the Customer, as set forth in these Terms of Use, and which may be amended by the third parties from time to time, and any such amendments thus becoming part of these Terms of Use.
- 2.8 **“Users”** are individuals who use the PTV Cloud Service in their position as employee or representative of the Customer.

### 3 Object of the agreement

- 3.1 PTV operates the PTV Cloud Service as defined under sec. 2 and makes it available to the Customer via the Internet, usually by means of an API. Access to the PTV Cloud Service is provided by PTV through a browser and/or various cloud interfaces or protocols defined by PTV.
- 3.2 These Terms of Use define the terms and conditions under which the Customer can access and use the PTV Cloud Service.
- 3.3 The use of the PTV Cloud Service is only permitted for Customers as defined under sec. 2. PTV reserves the right to verify the entrepreneurial status of the Customer.

### 4 Registration and activation

- 4.1 Use of the PTV Cloud Service requires preliminary registration by the Customer on a website designated by PTV. In the course of registration, the Customer opens a PTV account with username and password.
- 4.2 The registration data that PTV requests at the point of registration must be entered correctly and in full. The Customer must treat the password as confidential and protect it against unauthorized access. The password may only be disclosed to those Users who are entitled to use the PTV Cloud Service as part of their assigned tasks.
- 4.3 The Customer is obliged to keep the registration data up to date.

- 4.4 The Customer ensures that only authorized Users shall be provided with access to the PTV Cloud Service. The Customer shall take the necessary organizational and security measures to prevent access to the PTV Cloud Service by unauthorized Users.
- 4.5 If PTV has reasonable grounds to believe that an unauthorized User or a third party makes use of the access to or of the PTV Cloud Service, PTV shall be entitled to block the Customer's access to the PTV Cloud Service until access by the unauthorized User or third party is prevented.
- 4.6 PTV reserves the right to restrict the Customer's access to certain areas of the PTV account or to delete the PTV account if there is reason to assume that the Customer has violated the Terms of Use.

## **5 Services provided by PTV, rights to software and data**

- 5.1 PTV shall make the PTV Cloud Service available within the scope of its operational capabilities and in accordance with these Terms of Use. PTV may improve and extend the functions and features of and the access to the PTV Cloud Service. Upon the deployment of the improvements and extensions, the modified PTV Cloud Service becomes object of these Terms of Use. As part of its general product policy, PTV is entitled to make further changes, additions and restrictions to the PTV Cloud Service and to its product portfolio, especially to replace PTV Cloud Services and to discontinue individual PTV Cloud Services. PTV shall inform the Customer in text form at least three (3) months before implementing such change. The change is binding and therefore an integral part of the contract if the Customer does not terminate the respective contract in writing within one (1) month after receipt of the notification with a notice period of one (1) month to the end of the month. If PTV Cloud Services are discontinued, PTV is entitled to terminate the contract with a notice period of one (1) month to the end of the month. Third-Party Distributors shall ensure by means of appropriate contractual arrangements that the aforementioned right to make amendments also applies in relation to the Customers.
- 5.2 All components of the PTV Cloud Service, including the software and the Data, are protected by copyright. All rights to the software and Data are held solely by PTV and its suppliers. Except as expressly stated herein, these Terms of Use do not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licenses in respect of the PTV Cloud Service or the Service Description. Use of the software and Data for a purpose other than for the intended use of the PTV Cloud Service, in particular the attempted editing, transfer, resale or export of Data, are not permitted. Copyright notices and trademarks may not be edited or removed.

- 5.3 PTV hereby grants the Customer a non-exclusive, time-limited, non-transferable, revocable, non-sublicensable right to use the PTV Cloud Service during the contract term solely for the Customer's internal business operations as an end user.
- 5.4 The Customer shall comply with all applicable conditions, pertaining in particular to the contractually agreed use cases, the number of transactions and volumes, the number of Users, accesses or assets and territorial restrictions.
- 5.5 The Customer shall comply with the technical requirements and other technical specifications as set out in the Service Description for PTV Cloud Services.
- 5.6 To the extent that PTV provides services – e.g. paid support services – in addition to any rights of use to the Customer, the rights of use and the respective services are individual service obligations, each of which exist separately and independently of the other service obligations and can be defined separately (“**distinct**”).
- 5.7 The PTV Cloud Service shall be provided to the Customer in its respective standard version without any adaptation or service being necessary or owed.

## 6 Third-Party Licenses

- 6.1 The PTV Cloud Service includes the use of third-party components and geodata for which the following Third-Party Licenses as amended from time to time are applicable:
- 6.1.1 Third-party components, available at [MyPTV Third Party Components](#).
- 6.1.2 Geodata
- ▶ **PTV Logistics Licensing Terms for Geodata**, available at [PTV Logistics Licensing Terms for Geodata](#);
- and
- ▶ **PTV Mobility Licensing Terms for Geodata**, available at [PTV Mobility Licensing Terms for Geodata](#);
  - ▶ When using maps from the Open Street Map Project (“**OSM**”), the Open Database License applies, available under [Open Data Commons](#).
- 6.2 PTV makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of any such software under Third-Party Licenses.

## 7 Customer's obligations

- 7.1 The Customer shall use the PTV Cloud Services in accordance with the product specific Service Description and the SLA applicable to paid PTV Cloud Services. The Customer shall bear the sole responsibility and liability that its solution is functional for the use case, especially with regard to the integration of the PTV Cloud Service into its own software or services or the upload/editing of own data. PTV does not warrant the successful functional integration of the PTV Cloud Service into the Customer's solution and functionality of the Customer's solution.
- 7.2 The Customer is only permitted to carry out load tests within the framework of a fully transaction-based tariff. Such load tests consume billing-relevant transactions, i.e., transactions which are to be paid for. For all other tariffs, load test are excluded, e.g. tariffs based on Users, assets or similar, even of the tariffs are partially transaction-based.
- 7.3 The Customer may only use the PTV Cloud Service in compliance with the Terms of Use and the statutory provisions. In particular, the Customer shall not use the PTV Cloud Services in connection with or for activities that are improper, unethical, infringing the personal rights of third parties or otherwise inappropriate.
- 7.4 The Customer may not use any software or other technical devices that alter, expand or jeopardize the functioning of the PTV Cloud Service.
- 7.5 Except as may be allowed by any applicable law, the Customer shall not
- ▶ attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, translate, transmit, or distribute all or any portion of the PTV Cloud Service in any form or media or by any means; or
  - ▶ attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the PTV Cloud Service; or
  - ▶ license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the PTV Cloud Service available to any third party other than to the Users.
- 7.6 In the performance of its obligations under these Terms of Service, the Customer undertakes to comply with all principles and requirements of PTV's Code of Conduct as amended from time to time, available at [PTV Group Code of Conduct](#).

- 7.7 PTV Cloud Services are subject to certain technical limitations due to the way they are provided via the Internet, especially when posting requests and retrieving data. Within the framework of fair usage, access to the PTV Cloud Services shall be available to all Users to the same extent. Unfair use means that individual Users make excessive use of the PTV Cloud Services to the detriment of other Users. The User shall refrain from such unfair use. In order to ensure optimal performance for all Users and to prevent unfair use, PTV is entitled to take restrictive measures, e.g. by limiting the use of the PTV Cloud Service. PTV is entitled to temporarily or permanently block the PTV Cloud Service from the User if their unfair use seriously impairs the performance of the PTV Cloud Service.

## **8 Rights to Data and Authorisation for Usage Analysis**

- 8.1 PTV is entitled to statistically analyse the data entered or uploaded by the ID owner in the PTV Cloud Services or generated by using the PTV Cloud Services (usually non-personal data) in order to improve PTV's services.
- 8.2 For this purpose, the ID owner grants PTV a worldwide, royalty-free, irrevocable, sub-licensable and non-exclusive right to use this data, in particular to store it on a server, to provide it to other users with authorised access to a specific route, to process it and to duplicate it, insofar as this is necessary and to use the data in anonymised form for other services and applications.
- 8.3 The ID owner warrants that he is entitled to grant PTV the aforementioned rights and shall indemnify PTV against any conflicting third-party rights.
- 8.4 PTV shall also receive from the ID owner the rights to collect, store and statistically evaluate telemetry data to the following extent: PTV shall process telemetry data on usage at the ID owner level. The data collected will not include which user is acting. It will only be collected how the ID owner uses the PTV Cloud Services. This data processing includes, in particular, the processing of usage data for each product instance to determine how many commands or requests have been triggered by users, subscription-related information about data and information retrieval, storage space used, calculation time, etc. and information about the scope of use, in particular information about the number of product instances that access a licence within the ID owner's organisation in a given period (in particular to prevent licence misuse) and the extent of licence use within specific geographic regions.
- 8.5 Insofar as personal data is affected in the context of the data processing regulated here, reference is made to the Data Privacy Statement PTV Cloud Services for information about the specific data processing.

## **9 Restrictions for the Trial Period**



- 9.1 If available for the respective PTV Cloud Service and contractually agreed, the Customer may use a PTV Cloud Service free of charge and exclusively for testing purposes (“**Trial Period**”). **Any commercial/operational use is excluded.** PTV may, at its own discretion, terminate the Trial Period for the respective PTV Cloud Service at any time without stating reasons. The Customer may terminate the Trial Period at any time.
- 9.2 During the Trial Period, PTV may at any time at its own discretion restrict, revoke or terminate the Customer’s use of a PTV Cloud Service. PTV reserves the right to further restrictions with regards to number, scope, content and duration.
- 9.3 PTV may at any time change the technical basis and environment of the PTV Cloud Service. In particular, PTV may change the cloud itself as well as its location. PTV reserves the right to adapt the corresponding documents to this change. The Customer may terminate the Trial Period at any time if it does not agree with such change.
- 9.4 PTV does not provide any warranty with regards to the functional characteristics and availability of the PTV Cloud Service during the Trial Period.
- 9.5 PTV does not provide any SLA support during the Trial Period.
- 9.6 PTV does not assume any liability whatsoever under or in connection with the use of the PTV Cloud Services during the Trial Period. This exclusion of liability applies particularly to accidental damage, consequential damage, lost profits or business interruptions, regardless of whether or not the possibility of such damage is pointed out to the injured Party. This exclusion of liability, however, shall not affect the mandatory statutory liability in accordance with sec. 276 para. 3, 278 sentence 2, 599 BGB (German Civil Code).

## 10 Warranty

- 10.1 If the PTV Cloud Service has a defect or deviates functionally from the Service Description, the Customer shall immediately inform PTV with an exact description of the problem in text form, including all information useful for resolving the error. PTV will rectify correctly reported defects within a reasonable time period. If attempts to rectify the defects fail and this represents good cause for the Customer, the Customer is entitled to terminate the Subscription without adhering to a notice period. The Customer is not entitled to reduce the service fee because of defects. The right of the Customer to a partial or total refund of the fee on the principles of unjust enrichment in case of defects, is not affected by this. PTV shall pay damages or compensation of futile expenditures within the limits of sec. 12.

- 10.2 The Customer is aware that applications with maps, geographical attributes, points of interest, toll information, emissions, speed limits, truck features, long postcodes and other content as well as traffic data and forecasts never provide a perfectly accurate and complete picture of the actual circumstances, in particular because of the time delay between a change in the external environment and their inclusion in the PTV Cloud Service. Such gap between the actual circumstances and its rendering, and the resulting lack of quality, do not constitute a defect of the PTV Cloud Service.
- 10.3 If an alleged defect does not qualify for remediation by PTV (“**Apparent Defect**”), the Customer may be charged with the services rendered by PTV for verification and rectification of defects at PTV’s corresponding remuneration rates and expenses incurred, unless the Customer could not have recognised the Apparent Defect even if it had exercised due care.

## 11 Claims for legal defects

- 11.1 The PTV Cloud Services are free from any third-party intellectual property rights which prevent or limit the contractual use of the PTV Cloud Services. However, any claims for legal defects are always and exclusively limited to PTV Cloud Services in their stand-alone PTV standard version.
- 11.2 Claims for legal defects are excluded if the claims asserted by third parties are based on the Customer’s use of the PTV Cloud Service which exceeds the use of the PTV Cloud Service expressly granted to the Customer under the contract.
- 11.3 If a claim for legal defects is raised against PTV, PTV shall be entitled to choose at its own discretion to
- ▶ obtain sufficient rights of use for the contractually agreed purpose from the third party holding the infringed intellectual property right; or
  - ▶ modify or replace the PTV Cloud Services – in particular to replace the PTV Cloud Services with a new version or another PTV Cloud Service – in such a way that it no longer infringes the intellectual property rights of third parties, if and to the extent that the specified functionalities are not significantly impaired.
- 11.4 The Customer shall inform PTV without delay of any claims raised by third parties for infringement of intellectual property rights, leave to PTV all decisions regarding the essential measures of defense and not make any acknowledgement or conclude any settlement regarding the claims without PTV’s consent. Claims against PTV for legal defects are excluded if the Customer violates the aforementioned obligations.
- 11.5 The prescription period for claims for legal defects shall be twelve (12) months, unless PTV has fraudulently concealed the defect.

## 12 Liability, compensation for damages

- 12.1 PTV shall only be liable in accordance with the following provisions in (a) to (e):
- a) PTV shall be liable without limitation for damages caused by intent or gross negligence by PTV, its legal representatives or executives as well as for damages caused by intent by other vicarious agents; for gross negligence of other vicarious agents, liability shall be determined in accordance with the provisions for slight negligence listed below in (e).
  - b) PTV shall be liable without limitation for damages caused by intent or negligence resulting from injury to life, body or health by PTV, its legal representatives or vicarious agents.
  - c) PTV shall be liable for damages caused by the absence of assured features up to the amount which was covered by the purpose of the assurance and which was recognizable for PTV when the assurance was given.
  - d) PTV shall be liable for damages resulting from product liability according to the provisions of the German Product Liability Act.
  - e) PTV shall be liable for damages resulting from the violation of material obligations by PTV, its legal representatives or vicarious agents; material obligations are the essential obligations which form the basis of the contract, which were decisive for the conclusion of the contract and on the fulfilment of which the Customer may rely. If PTV has violated these material obligations through slight negligence, its liability shall be limited to the amount which was foreseeable for PTV at the time of the respective performance.
- 12.2 PTV shall only be liable for the loss of data up to the amount which would have been incurred if the data had been properly and regularly backed up for the purpose of restoring them.
- 12.3 Any further liability on the part of PTV is excluded in principle.

## **13 Transfer and assignment, subcontractors, set-off**

- 13.1 PTV may transfer the contractual relationship existing with the Customer to a third party, unless the change of the contractual partner adversely affects justified interests of the Customer.
- 13.2 PTV reserves the right to involve subcontractors for the provision of the services.
- 13.3 The Customer shall not be entitled to exercise a right of set-off or retention with respect to its payment obligations pursuant to these Terms of Use, except for claims which have not been contested by PTV or which have been assessed by a final and binding decision of a court or arbitrator.

## 14 Data security and protection

- 14.1 PTV shall process the registration data and all other data that the Customer transmits to PTV in the course of the initialization and operation of the PTV Cloud Service. Further processing of personal data (e.g., for the transmission of information through PTV products and services) shall be carried out only if the Customer has agreed to such processing. Details of data processing are described in the data protection declaration as amended from time to time, product-specific available at [Data Privacy statement PTV Cloud Service](#), TOMS at [Data Protection: General technical and organizational measures](#).
- 14.2 If the Customer processes personal data while using the PTV Cloud Service, the Customer alone shall be responsible for ensuring that each individual person concerned has agreed to his/her data being processed, or that there is statutory authorization to this effect. The Customer shall always remain the sole party responsible for such personal data. The Customer shall exempt PTV from all claims of the person concerned and shall compensate PTV for any damage caused to PTV arising out of a violation of data protection laws, unless the Customer can prove that it is not responsible for this violation.
- 14.3 The Parties shall enter into an agreement on order data processing according to Art. 28 GDPR in accordance with the respectively applicable template, available at [Data Processing Contract PTV Cloud Service](#).

## 15 Final provisions

- 15.1 PTV shall be entitled to have the Customer's conformity of the actual use of the PTV Cloud Service examined. The examination may only be carried out by an expert who is also bound to confidentiality vis-à-vis the Customer, who is not bound by the Customer's instructions and who may only disclose information to PTV if and to the extent that a licensing breach is detected and that such information is necessary for the enforcement of such licensing breach. In particular, the expert shall not be entitled to disclose any information at all if the licensing breach has been admitted and corresponding claims for damages have been satisfied. The Customer must be given at least two (2) weeks' notice in text form of any such examination.
- 15.2 The Subscription Term shall be extended by any period in which PTV is prevented, without itself being responsible, from providing the PTV Cloud Service particularly, but not limited to, through labor disputes, acts of god or any other unusual and unforeseeable events (collectively "**Force Majeure Event**") as well as an appropriate period for restarting after the end of the Force Majeure Event. If a Force Majeure Event lasts for more than three (3) months, each Party shall have the right to terminate the Subscription.

- 15.3 The Parties are aware that PTV Cloud Services may be subject to export and import restrictions. In particular, obtaining an approval may be required, or the use of the PTV Cloud Service or related technologies may be subject to restrictions abroad. The Customer shall comply with the applicable export and import control regulations of the Federal Republic of Germany, the European Union and the United States of America, as well as all other relevant regulations. Fulfilment of the Subscription is subject to national and international regulations of export and import law or other statutory provisions.
- 15.4 In particular, the Customer acknowledges that the use of the PTV Cloud Services may be subject to geographical restrictions resulting from applicable foreign laws and regulations, in particular those restrictions set forth under the following link: [Geographical Restrictions](#).
- 15.5 Should individual provisions of these Terms of Use be invalid, this shall not affect the validity of the remaining provisions. The Parties will endeavor to find a provision in place of the invalid provision which is legally and economically most appropriate to the objective of the contract.
- 15.6 The law of the Federal Republic of Germany shall apply, excluding the UN Convention on Contracts for the International Sale of Goods and private international law.
- 15.7 Place of performance for all obligations arising out of the contractual relationship is the registered office of PTV.