

Activation terms and conditions

1. Applicability and Definitions

1.1 These Terms are applicable to any use of the Platform and/or the Products by an End User who wishes to activate an Account for the use of the Products.

1.2 Capitalized terms or expressions shall be defined as follows:

“**Account**”: A collection of data that allows the End User to gain access to the Platform and the Products.

“**API**”: An application programming interface.

“**CMR Convention**”: The United Nation convention that was signed in Geneva on 19 May 1956 relating to various legal issues concerning transportation of cargo by road.

“**Controller**”: A party when submitting, disclosing or making otherwise available (directly or through an intermediary) Personal Data to another party and determining the purposes and means of the processing of such Personal Data.

“**e-CMR Protocol**”: The “Additional Protocol to the Convention on the Contract for the International Carriage of Goods by Road (CMR) concerning the Electronic Consignment Note” entered into force on 5 June 2011, establishing the legal framework and standards for using electronic means of recording and storing consignment note data.

“**End User**”: The natural person or legal entity, active in sending, forwarding, carrying, transporting, consigning or receiving goods to which the CMR Convention is applicable or declared applicable, that has an Account on the Platform and is in the possession of any Products which it wishes to activate.

“**e-Waybills**”: The electronic consignment notes for transport of goods issued and signed by using the Platform.

“**GDPR**”: The EU General Data Protection Regulation (2016/679).

“**In Writing**”: Paper or electronic recording.

“**Log Files**”: A file in which the visiting data of an End User is held. Visiting data is, in any case: date and time of login and logout from the Account, date and time of creating new e-Waybills or messages, date and time of changing existing e-Waybills and messages. The contents of e-Waybills and messages are not visible via the Log Files.

“**Personal Data**”: Any information related to an identified or identifiable natural person (data subject).

“**Platform**”: The hard- and software owned by TransFollow, as amended from time to time, by means of which the Products are issued to and activated for End User. The Platform is only accessible with an Account. The Platform is an API based solution by which registered users such as senders, forwarding agents, carriers and consignees can, amongst others, (a) create electronic waybills for transport of goods, (b) communicate amongst each other, and (c) digitally sign such electronic waybills in order to exchange freight related data used for a waybill, proof of delivery and supply chain visibility, compliant to the e-CMR Protocol.

“**Processor**”: A party when processing, on behalf of Controller, Personal Data submitted, disclosed or otherwise made available (directly or through an intermediary) by Controller.

“**Products**”: The credits allowing End User (i) to issue e-Waybills through the Platform and (ii) to benefit from and use related services such as maintenance and support services.

“**Terms**”: The present Activation Terms and Conditions.

“**TF Archive**”: The archive function of the Products that allows the End User to store the Products and related data via the Platform for up to seven (7) years.

“**TF Notice**”: The functionality of the Platform that allows the End User to create and send a message to another End User about a Product.

“**TF Waybill**”: The functionality of the Platform that allows the End User to create, fill in, change and sign a Product and send it to another End User electronically.

“**TransFollow**”: The legal entity operating the Platform, called TransFollow B.V., located in Nootdorp, The Netherlands, and registered with the Chamber of Commerce under number 2701.5326.

“**Website**”: The TransFollow commercial website: www.TransFollow.org.

2. Ownership of the Platform

- 2.1 Neither the Platform nor any related software are being sold. All ownership, intellectual property, and other rights and interests in the Platform and any related software that are made available to the End User under these Terms, as well as all preparatory, support, promotional or other material pertaining thereto, remain solely with TransFollow or its affiliates or licensors. Unless expressly agreed otherwise In Writing, the End User obtains only a right of use, which is non-exclusive and non-transferable. The End User shall not be entitled to reproduce the Platform, the Products and/or any related software or materials or to make the Platform, the Products and/or any related software or materials openly available or available to any third party.
- 2.2 The source code of the Platform, the Products and of any related software is proprietary to TransFollow and is a trade secret of TransFollow, its affiliates or its licensors, and is their confidential information.
- 2.3 TransFollow is allowed to take any technical measures it deems necessary at its sole discretion to protect the Platform, the Products and any related software.

3. License

- 3.1 TransFollow grants the End User with a limited, non-exclusive, revocable, non-transferable, non-assignable, non-sub licensable license, limited to the sole use of and access to the Platform with the Account, for the use of the Products.
- 3.2 The use of the Platform and the Products is granted without any specific fees for the End User.

4. Access to the Platform and the Products by the End User

- 4.1 The End User is responsible for arranging the required hardware, software and telecommunication facilities that are necessary for the use of the Platform and the Products through the Account, such as devices with which the End User can connect to the internet (for example, a PC, smartphone or tablet) and internet connections. Any of these facilities must meet all and any further requirements of TransFollow as communicated by TransFollow on the Website from time to time.
- 4.2 The End User gets access to the Platform with the login credentials it choses during the Account registration or it receives from its supplier of the Products.
- 4.3 The End User is obliged to take appropriate security measures with regard to its internet connection and the equipment referred to in Clause 4.1 in order to prevent unauthorized access to the Account. The End User is, in any case, required to:
 - 4.3.a maintain activated antivirus software;
 - 4.3.b install security updates in a timely manner after they become available;
 - 4.3.c carefully keep its login data secret.

- 4.4 In the event of abuse of, or unauthorized access to, the login credentials or a suspicion thereof, the End User shall report such incidence to TransFollow as soon as possible. In response to this report, TransFollow can then take any measures it deems necessary at its sole discretion, such as blocking the existing login credentials and registering new login credentials.
- 4.5 The End User shall ensure that all data associated with its Account is always correct and up to date, especially its name, postal address, email address, telephone number and, if applicable, bank or account number.

5. Products

- 5.1 The End User shall be solely responsible for the issuance and use of the Products, notably with respect to all information included therein, their signature and use in connection with a transport operation.
- 5.2 The End User acknowledges that Products issued by using the Platform and related data will be stored via TFArchive. The End User shall be responsible for its use of the TFArchive service and for saving such copies and data on its own systems for back-up purposes.

6. Restrictions

- 6.1 The End User may not use the Platform and the Products for any other purpose not expressly permitted under these Terms.
- 6.2 The End User may not use the Platform and the Products in such a way that violates any laws or regulations or infringes the rights of third parties or in a way that causes discomfort, damage or places the functioning of the Platform, the Products and any related software and/or networks and/or systems of third parties into jeopardy.
- 6.3 The End User shall not decompile, reverse engineer, disassemble, attempt to derive the source code of, modify, decrypt, decompile or create derivative work from the Platform, the Products and/or any related software or otherwise reduce or attempt to discover any source code or underlying structures, ideas or algorithms of the Platform, the Products and/or any related software or any confidential information or trade secret.
- 6.4 TransFollow has protected the software of the Platform against infringement by third parties. The End User may not remove or circumvent this protection.
- 6.5 The End User is not allowed to remove or change any designations regarding copyrights, trademarks, trade names or other intellectual property rights from the Platform, the Products or any related software or material.
- 6.6 The End User is not allowed to create the impression that the End User is linked to TransFollow or to the Platform or the Products in its communication to third parties, unless this has been expressly authorized by TransFollow beforehand In Writing.

7. Availability and Maintenance

- 7.1 TransFollow is aware that logistic processes continue day and night. That is why safeguards are built into the Platform, thus reducing the chance of loss to a minimum in case of interruption of the Products or loss of connection to the Platform. The Platform also supports offline scenarios for electronic signature of the Products.
- 7.2 TransFollow reserves the right to check the availability of the Platform and possibly halt the Products temporarily for maintenance, adjustment and/or improvement of the Platform. TransFollow can carry out maintenance, adjustment and/or improvement at its sole discretion at a time decided by TransFollow. Advance notice of when the work will be taking place will be provided on the "System Status" page of the Website. TransFollow seeks to minimize the impact to End Users. TransFollow shall not be liable for any harm or costs caused to End Users resulting from such temporary maintenance, adjustment and/or improvement of the Platform or the Products.

8. Updates and Upgrades

- 8.1 TransFollow will from time to time update the Platform, the Products and the related software in order to preserve and/or enhance compatibility of the Platform, the Products and the related software and/or resolve minor bugs, security issues or other minor issues.
- 8.2 TransFollow may from time to time upgrade the Platform to improve existing functionalities and to add new functionalities.
- 8.3 While performing updates and upgrades, TransFollow will seek to minimize interruptions in the availability of the Platform and the Products.
- 8.4 Any intellectual property licensed or otherwise made available by TransFollow to End User under the present Terms or created in relation with any amendment, update, enhancement or modification of the Platform, the Products and the related software are owned by TransFollow respectively its affiliates, and End User hereby assigns and conveys to TransFollow all rights, title and interest in such intellectual property, if any.

9. Warranty Disclaimer

The Platform is licensed “as is” and “as available” and TransFollow disclaims any and all other warranties, whether express, implied, or statutory including, without limitation, any implied warranties of merchantability, satisfactory quality, fitness for a particular purpose, accuracy, timeliness, title, or non-infringement by law. Without limiting the generality of the foregoing, TransFollow expressly disclaims all warranties of any kind for third party software, and does not warrant that the Platform, the Products and any related software will meet the End User’s expectations or requirements or that the operation of the Platform, the Products and/or any related software will be uninterrupted, timely, secure, or error free, that defects or errors in the Platform, the Products or any related software will be corrected or that the Platform will be compatible with future products of TransFollow, or that any information or data stored or transmitted through the Platform, the Products or any related software will not be lost, corrupted or destroyed. The End User assumes responsibility for selecting the Platform and the Products to achieve its intended results, and for the use of the Platform, the Products and any related software. The End User shall bear the entire risk as to the quality and the performance of the Platform, the Products and any related software.

10. Limitation of Liability

In no event shall TransFollow be liable to End User or any party related to End User for any direct and indirect, incidental, consequential, special, exemplary, or punitive damages (including, without limitation, damages for loss of business profits, business interruption, loss of business information, loss of data or other such pecuniary loss) (“**Damages**”) resulting (i) from a malfunction of the Platform, the Products or any related software, or (ii) from the Platform, the Products or any related software not being available or not being fully available, whether under a theory of contract, warranty, tort (including negligence), product liability, or otherwise, even if TransFollow has been advised of the possibility of such damages. TransFollow shall in no event be responsible for (i) the content and use of the Products nor for the use - or absence of use - of the TFArchive service by the End User, (ii) for the non-recognition of any digital signature by any third party, and/or (iii) for the non-recognition of the Products in a given country. Further, TransFollow shall not be liable for any Damages whatsoever in case of any breach or gross negligence of End User of its obligations under the Terms. In no event shall TransFollow’s total aggregate and cumulative liability to End User for any and all claims of any kind arising hereunder exceed the amount of Euro ten thousand (€ 10,000) unless the damage is due to willful intent or gross negligence on the part of TransFollow.

11. Indemnification

The End User shall indemnify and hold harmless TransFollow against any claims by third parties for any damages or losses of any kind suffered by TransFollow as a result of a breach by End User of its obligations under these Terms or any related contract.

12. Data Protection, Data Retention Period

- 12.1 The End User acknowledges that Products issued by using the Platform and related data will be stored for a period of six (6) months from the moment the recipient signs the Product, but in no event beyond the term of the license granted hereunder. Any storage beyond the 6-month period and the related costs thereto shall be separately agreed between the Parties. TransFollow shall process any such data only for purposes of providing the Platform, the Products and any related software.
- 12.2 To the extent that TransFollow acts as Processor of Personal Data TransFollow represents and warrants to comply at all times with any and all requirements of the GDPR. In this respect, TransFollow shall, upon request, make available to End User all information necessary to demonstrate compliance with its contractual and legal obligations in relation to Personal Data and allow for and contribute to audits, including inspections, conducted by TransFollow or another auditor mandated by TransFollow.
- 12.3 TransFollow may collect, process and share the following types of Personal Data within the scope of this Agreement: personal data including names, surnames, phone number, email address and other contact details, functions, user account credentials and logistical operational information of End Users as necessary for the purpose of the administration and provision of the Products and additional services to End Users. TransFollow is entitled to process the Personal Data as long as they are necessary for TransFollow to fulfil the purposes of its contractual obligations. When the Personal Data are no longer necessary for TransFollow to fulfil the purposes of its contractual obligations the provisions of Clause 12.10 shall apply *mutatis mutandis*.
- 12.4 The legal basis for the processing of Personal Data of End Users by TransFollow is the necessity for the provision of the Products and services ordered by End Users (Article 6,1.(b) of the GDPR), as well as TransFollow's legitimate interests (Article 6,1.(f) of the GDPR), including TransFollow's and Distributor's legitimate interests to provide the Products and related services, if any. The Personal Data will be processed for the duration of the relationship with the End User, it being noted that Personal Data may then be stored for ten (10) years after expiry or termination of the contractual relationship for the establishment, exercise or defense of legal claims, and/or as required or permitted by applicable law.
- 12.5 TransFollow shall not transfer Personal Data received from the End User outside the European Economic Area ("EEA") to countries not covered by an adequacy decision of the European Commission without ensuring that such transfer is permitted in accordance with applicable data protection laws, such as by EU Standard Contractual Clauses or other appropriate safeguards in accordance with Article 46 to 49 of the GDPR. In particular, End User is aware that, in relation to the provision of the Products and services, TransFollow transfers Personal Data to other legal entities that have gained access to a specific digital consignment note to perform their duties in the logistics chain that could be located within or outside of the EEA.
- 12.6 TransFollow shall implement and shall maintain at all times appropriate technical and organisational security measures in particular to protect the Personal Data against unauthorised or unlawful processing, accidental loss and destruction or damage. TransFollow shall further ensure the ongoing confidentiality, integrity and availability of the Personal Data and resilience of the systems and services used for the processing of the Personal Data and the ability to restore the availability and access to the Personal Data in a timely manner in the event of a physical or technical incident. TransFollow shall test and review the efficiency of the implemented technical and organisational measures on a regular basis and, upon request, shall provide End User, without undue delay, with a written confirmation that such technical and organisational measures have been implemented and are observed. The End User declares that he/she is aware of the security level and that he considers this level to be appropriate.
- 12.7 As set forth under applicable data protection laws, data subjects may have the right to request access to their Personal Data the Parties hold about them, to request the rectification or erasure of any inaccurate Personal Data, to object under certain circumstances to the processing of their Personal Data, to request the restriction of processing as well as to exercise the right to data portability by writing to the data controllers. Data subjects are also entitled to lodge a complaint with the competent supervisory authority.
- 12.8 TransFollow shall be liable for damages incurred by End User as a result of any breach of the GDPR. TransFollow will indemnify and hold harmless End User from and against any loss, damage, cost, expense claim, demand, liability, judgment, detriment, fine or compensation it incurs as a result of TransFollow's breach of the GDPR.

- 12.9 The End User shall only enter personal details into the Platform in so far as it is entitled to do so. The End User shall indemnify and hold TransFollow harmless against third-party claims arising from the unlawful entering of Personal Data into the Platform by the End User. More information concerning the processing of personal data via the Platform can be found in the Privacy Statement displayed under www.portal.transfollow.com that the End User agreed to as part of its registration. The processing of Personal Data in the Platform shall be carried out as stated in this Privacy Statement.
- 12.10 Upon expiration or termination of the contractual relationship with End User, TransFollow shall, at the choice of End User, either (i) delete or (ii) return all Personal Data, delete any existing copy and certify In Writing that it has done so, unless retention of a copy of the Personal Data is required by any applicable law, in which case TransFollow will inform End User accordingly.

13. Consent to Use Data

The End User acknowledges and agrees that TransFollow may collect and use technical data and related information - including but not limited to Log Files, technical information about the End User's computer, device, system and application software, and peripherals - that is gathered periodically to facilitate the provision of software updates, product support, and other products (if any) related to the TransFollow Portal, the Products and any related software. TransFollow may use this information, as long as it is in a form that does not personally identify the End User, to improve its products, the Products or technologies.

14. Term and Termination

- 14.1 The license to use the Platform, the Products and any related software and materials is subject to the End User's prior acceptance of these Terms and to TransFollow's confirmation of acceptance of the End User. By registering as an End User using the electronic registration form on the Platform, the End User states to TransFollow that it wants access to an Account and confirms its acceptance of these Terms. TransFollow's acceptance of the End User will be provided by sending an email with a confirmation link to the email address that the End User entered in the registration form. By clicking on the confirmation link, the license hereunder is granted and the access to an Account comes into effect.
- 14.2 The license is valid until further notice. The notice period is one (1) month prior to the end of each calendar month. Notice shall be given In Writing (i.e. by mail or email).
- 14.3 The license and any related contract can be terminated by TransFollow with immediate effect in case of breach of these Terms by the End User, without prejudice to the possibility for TransFollow to temporarily suspend the access to the Account.
- 14.4 TransFollow is further entitled to terminate the present Terms in the following situations:
- 14.4.1 the End User is in default in respect of an obligation; or
 - 14.4.2 the license arrangement between TransFollow and End User's supplier of the Products for the use of the Platform, any related software and any related services for the provision of support services is terminated for whatever reason.
- 14.5 Termination of the license granted hereunder shall automatically imply the following consequences:
- 14.5.1 access to the Account shall be permanently blocked;
 - 14.5.2 no e-Waybill may be issued nor any other Products used; and
 - 14.5.3 all data, including data stored in the TF Archive, shall be deleted, after a waiting period of six (6) months. During such waiting period, the End User may request TransFollow to set the End User data stored in the TF Archive at the End User's disposal, in a commonly accepted format (html, pdf, Microsoft Office), after which the End User shall be deemed to have renounced to such possibility and all data will be deleted.

- 14.6 Further, the End User agrees to immediately cease all use of the Platform, the Products and any related software and materials, and to erase and destroy all copies, full or partial, of any software that was downloaded and installed on a computer, a hard disk, phone, tablet or other storage medium that is in the End User's control. At TransFollow's request, the End User shall provide a written certification of such destruction.
- 14.7 Any claim, the cause of which has arisen during the term of the license, which is not submitted and properly substantiated within the thirty (30) days following expiry or termination of the license shall be deemed waived and shall be conclusively barred from assertion by the claimant unless the delay in submission or substantiation is due to circumstances beyond the claimant's control.
- 14.8 No indemnity, claim or compensation shall be due to either party by reason solely of termination.
- 14.9 All provisions of these Terms which by their nature should apply beyond termination will remain in force after any termination or expiration of these Terms.

15. Amendment of Terms

- 15.1 TransFollow reserves the right to change or supplement these Terms from time to time.
- 15.2 Subject to the remainder of this Clause 15, these amendments shall be published on the Website and take effect immediately upon publication on the Website.
- 15.3 TransFollow will notify any envisaged amendment to these Terms upon thirty (30) days prior notice, by email or message sent via TFNotice. The End User may refuse the amended terms during such notice period, in which case (i) it shall notify TransFollow of such refusal In Writing and (ii) the license granted hereunder and any related contracts shall expire on the last day of the notice period.

16. Final Provisions

- 16.1 If any provision in the Terms is found to be void, this does not affect the validity of the entire Terms.
- 16.2 No departure from the provisions of these Terms shall obligate any Party to permit any subsequent departure and no waiver of any of the provisions of these Terms shall be deemed to be a waiver thereafter of any such provision or of any succeeding breach of any such provision.
- 16.3 Information and announcements on the Website are subject to software and typographical errors. In the event of any inconsistency between the information on the Website and a contract, the contract shall prevail.
- 16.4 The Log Files and other records (electronic or not) of TransFollow form evidence for arguments by TransFollow. The version of any (electronic) communication received or saved by TransFollow is deemed to be authentic, and TransFollow may validly rely on such assumption in its decision making.
- 16.5 The End User acknowledges and agrees that TransFollow may at all times appoint third parties to carry out its obligations under any contract.
- 16.6 These Terms and the relationship between the End User and TransFollow shall be governed by the laws of Switzerland, excluding its conflicts of law provisions. The courts of Geneva shall have exclusive jurisdiction with respect to all litigation related to these Terms and the relationship between the End User and TransFollow, and no other courts will have jurisdiction in any such matter.

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