

# Data protection information for factoring debtors<sup>1</sup> of CommerzFactoring GmbH (hereinafter also “CommerzFactoring”) regarding data processing on the basis of the General Data Protection Regulation (GDPR) from 25 May 2018 onwards

The following data protection information provides an overview of the collection and processing of debtor data in the context of our factoring activities on the basis of data protection laws effective as of 25 May 2018, particularly pursuant to the implementation of Articles 13, 14, and 21 of the General Data Protection Regulation (GDPR). The following information provides an overview of how we process personal data, and of the debtors’ rights under data protection laws. Which data is processed in detail and how data is used, significantly conforms to the services requested by or agreed with our customers. Factoring is understood as the acquisition of our customers’ account receivables against their debtors for financing purposes.

For a better understanding of the following data protection information, it should be noted that CommerzFactoring GmbH is a joint venture, namely between Commerzbank AG as part of Commerzbank Group and TARGOBANK AG as part of Crédit Mutuel Group (any and all group companies of Commerzbank Group and Crédit Mutuel Group, including CommerzFactoring, hereinafter the “Affiliated Companies”).

## 1. Who is responsible for the data processing and whom can I contact?

The data controller is: CommerzFactoring GmbH, Grosse Bleiche 35 - 39, 55116 Mainz, Germany.

The data protection officer can be reached at: CommerzFactoring GmbH, Grosse Bleiche 35 - 39, 55116 Mainz, Germany or at the following e-mail address: [Datenschutzbeauftragter@commerzfactoring.de](mailto:Datenschutzbeauftragter@commerzfactoring.de).

## 2. Which sources and data do we use?

We process personal data that we obtain from our customers in the course of our business relationship. Additionally - to the extent necessary for our rendering of services - we process personal data that we permissibly obtain from publicly available sources (e.g. debtor registers, land registers, commercial registers and registers of associations, press, internet) or that is legitimately provided to us by other Affiliated Companies, or by other third parties (e.g. credit agencies). Relevant personal data include personal details (e.g. name, address and other contact details). They may also include order data, data from the fulfilment of our contractual obligations (e.g. sales data in payment transactions or data regarding receivables assigned to us), information regarding the financial situation (e.g. data regarding the creditworthiness, credit scorings/ratings, or the source of assets), and other comparable data.

## 3. Why do we process your data (purpose of the data processing) and on what legal ground?

We process personal data in accordance with the provisions of the European General Data Protection Regulation (GDPR), the German Data Protection Act (*Bundesdatenschutzgesetz*, BDSG) and, if applicable, relevant national data protection laws:

### a) For the fulfilment of contractual obligations (Art. 6 (1) b GDPR)

Data is processed in order to provide financial services in the course of the performance of the contracts with our customers or in order to implement pre-contractual steps that are performed upon request. The purposes of the data processing primarily conform to the specific product (e.g. factoring, forfaiting) and may include needs analyses, provision of advice, and the execution of transactions. Further details about the purposes of the data processing can be found in the respectively applicable contractual documents and terms and conditions.

### b) In the course of the balancing of interests (Art. 6 (1) f GDPR)

If necessary to safeguard our own, or a third party’s legitimate interests, we process personal data beyond the mere fulfilment of the contract. Examples:

- Consultation and exchange of data with credit agencies (e.g. SCHUFA) for the determination of the creditworthiness or of counterparty credit risks in the factoring or forfaiting business,
- Assertion of legal claims and defense in legal disputes,
- Guaranteeing IT security and CommerzFactoring’s IT operations,
- Prevention and investigation of criminal offences,
- Building and site security measures (e.g. access controls),
- Measures to guarantee the domestic authority,
- Measures related to the business management and the further development of products and services,
- Measures for refinancing and/or risk protection,
- Risk management within the Affiliated Companies.

### c) Based on a consent (Art. 6 (1) a GDPR)

If we were given the consent to process personal data for specific purposes (e.g. forwarding data within the group, evaluating payment transaction data for marketing purposes), the processing of such data is lawful on the basis of such consent. A given consent may be withdrawn at any time. This also applies to the withdrawal of declarations of consent given to us before the application of the GDPR, i.e. before 25 May 2018. Withdrawing the consent will not affect the lawfulness of the data processed until the consent was withdrawn.

### d) Due to statutory requirements (Art. 6 (1) c GDPR) or in the public interest (Art. 6 (1) e GDPR)

As a financial services institution, we are also subject to a range of legal obligations, i.e. statutory requirements (e.g. under the German Banking Act (*Kreditwesengesetz*), the German Money Laundering Act (*Geldwäschegesetz*), the German Securities Trading Act (*Wertpapierhandelsgesetz*), and tax legislation), and regulatory requirements (e.g. imposed by the European Central Bank, the European Banking Authority, the Deutsche Bundesbank, and the German Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht*)). Data is processed for purposes including checks of the creditworthiness, identity and age checks, prevention of fraud and money laundering, the fulfilment of monitoring and reporting obligations under tax law, and the evaluation and management of risks within the Affiliated Companies.

## 4. What categories of personal data are processed?

Where necessary, we process personal data of the following categories:

- Name, address, contact data, and if applicable contract data, billing data, creditworthiness data.

## 5. Who receives personal debtor data?

Access to customer and debtor data is provided to those departments within CommerzFactoring that need such data in order to fulfil our contractual obligations with the customer as well as our legal obligations. Service providers and agents engaged by us may also be provided with data for such purposes, provided that they maintain banking secrecy. These are companies and businesses operating in the following areas: credit, financial or insurance services, IT services, logistics, printing services, telecommunications, debt collection, advice and consultancy, and sales and marketing. With regard to data transfer to recipients outside CommerzFactoring, it should be noted that as a financial services institution we are bound to secrecy in respect of all customer and relevant debtor-related facts and assessments of which we become aware (banking secrecy). We are only permitted to transfer data and information about customers including their debtors if we are required to do so by law, if the customer has consented to this, or if we are authorized to issue a bank information. Under these conditions, recipients of personal data may include:

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<sup>1</sup> i.e. debtors of receivables which we have purchased or which were assigned to us pursuant to factoring agreements from our customers.

- Public authorities and institutions (e.g. the Deutsche Bundesbank, the German Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht*), the European Banking Authority, the European Central Bank, tax authorities, and law enforcement authorities) in case of statutory or official obligations.
- Other credit or financial services institutions or similar institutions to which we provide personal data in order to conduct our business relationship with our customers (depending on the contract, e.g. correspondent banks, insurance companies, depository banks, stock exchanges, credit agencies or the banks holding the accounts pledged in our favor).
- Affiliated Companies with whom we cooperate in connection with the processing, the handling, the risk diversification, and the re-financing of the factoring and forfaiting agreements we enter into.
- Affiliated Companies for risk management purposes due to statutory or official obligations.

Further recipients of data may include bodies to whom we are entitled to transfer data and information based on a consent given to us, or in respect of which we are released from banking secrecy pursuant to an agreement or a consent.

#### **6. Will data be transferred to a third country or to an international organization?**

Data is transmitted to bodies in countries outside the European Union/EEA (so-called third countries) to the extent necessary for the execution of customer orders (e.g. payment and securities orders), if required by law (e.g. reporting obligations under tax law), or if we were given a consent. Data may also be transmitted to bodies in third countries in the following cases:

#### **7. For how long will personal data be stored?**

We process and store personal data for as long as is required to fulfil our contractual and statutory obligations. It should be noted that our business relationship with the factoring customer is a continuing obligation that is intended to run for years. If data is no longer required for the fulfilment of contractual or statutory obligations it is periodically deleted, unless its - temporary - continued processing is necessary for the following purposes:

- Fulfilment of record keeping or data retention obligations under commercial or tax law: relevant legislation in that respect includes the German Commercial Code (*Handelsgesetzbuch*, HGB), the German Tax Code (*Abgabenordnung*, AO), the German Banking Act (*Kreditwesengesetz*, KWG), the German Money Laundering Act (*Geldwäschegesetz*, GWG), and the German Securities Trading Act (*Wertpapierhandelsgesetz*, WpHG). The time periods applicable for the retention and/or documentation pursuant to such laws range between two (2) and ten (10) years.
- Preservation of evidence in line with the statutory limitation periods. Pursuant to section 195 et seq. of the German Civil Code (*Bürgerliches Gesetzbuch*, BGB), these limitation periods can last up to 30 years, whereby the regular limitation period lasts three (3) years.

#### **8. What data protection rights exist?**

Each data subject has the right of access pursuant to Article 15 GDPR, the right to rectification pursuant to Article 16 GDPR, the right to erasure pursuant to Article 17 GDPR, the right to restriction of processing pursuant to Article 18 GDPR, the right to object pursuant to Article 21 GDPR, and the right to data portability pursuant to Article 20 GDPR. Regarding the right of access and the right to erasure the restrictions pursuant to Sections 34 and 35 of the German Data Protection Act (*Bundesdatenschutzgesetz*, BDSG) apply. Additionally, there is a right to lodge a complaint with a supervisory authority (Article 77 GDPR in conjunction with Section 19 of the German Data Protection Act (*Bundesdatenschutzgesetz*, BDSG)). Any consent given to us for the processing of personal data may be withdrawn towards us at any time. This also applies to the withdrawal of declarations of consent given to us before the application of the GDPR, i.e. before 25 May 2018. Any withdrawal has only effect for the future. Any processing before the withdrawal is not affected thereby.

#### **9. Is profiling or automated decision making used and is there a duty to provide data?**

In the course of our factoring activities, no profiling is carried out and no automated decisions are made vis-à-vis to debtors. A debtor is not obliged to provide data.

#### **Information regarding the right to object pursuant to Article 21 of the General Data Protection Regulation (GDPR)**

##### **Right to object on grounds relating to his or her particular situation**

The debtor has the right to object, on grounds relating to his or her particular situation, at any time to processing of personal data concerning him or her which is based on Article 6 (1) (e) GDPR (data processing in the public interest) and Article 6 (1) (f) GDPR (data processing based on the balancing of interests), including profiling in the meaning of Article 4 no. 4 GDPR based on those provisions. If the customer objects, we will no longer process the personal data, unless we can demonstrate compelling legitimate reasons for the data processing which override the customer's interests, rights and freedoms, or the data processing serves for the assertion, exercise, or defense of legal rights.

The objection is not subject to formal requirements and shall preferably be addressed to:

CommerzFactoring GmbH, Grosse Bleiche 35 - 39, 55116 Mainz, Germany.