

Terms of Use for PTV Cloud Services

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Short title	Terms of Use for PTV Cloud Services
Version of contract template:	2.2.2 from 2024-11-08

These terms of use for cloud services ("**Terms of Use**") apply to the PTV Cloud Services.

1 Object of these Terms of Use

- 1.1 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.
- 1.2 These Terms of Use define the terms and conditions under which the Customer can access and use the PTV Cloud Service.
- 1.3 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.
- 1.4 The Customer's terms and conditions shall not apply even if PTV does not separately object to their applicability in each individual case.

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.
- 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, usually by means of an API.
- 2.4 "**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 the PTV Cloud Service as amended from time to time, available under https://www.ptvgroup.com/en/service_level_agreement_ptv_cloud_services_en.pdf.
- 2.5 "**Subscription**" is the paid subscription for the time-limited use of a PTV Cloud Service ordered by the Customer.
- 2.6 "**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.
- 2.7 "**User**" are individuals who use the PTV Cloud Service in their position as employee or representative of the Customer.

3 Registration and activation

- 3.1 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.
- 3.2 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.
- 3.3 The Customer is obliged to keep the registration data up to date.
- 3.4 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.
- 3.5 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.
- 3.6 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.

4 Services provided by PTV, rights to software and data

- 4.1 PTV shall make the PTV Cloud Services available within the scope of its operational capabilities and in accordance with these access of the PTV Cloud Services. Upon deployment of the improvements and extensions, the modified PTV Cloud Service becomes object of these Terms of Service. As part of its general product policy, PTV is entitled to make further changes, additions and restrictions to PTV Cloud Services 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 thus an integral part of the contract if the customer does not terminate the respective Subscription in text form at the time of implementation of such change.

- 4.2 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.
- 4.3 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.
- 4.4 The Customer shall comply with all applicable conditions, pertaining in particular to the number of licenses, the number of users and the number of authenticated workstations, according to the contractually agreed use cases.
- 4.5 The Customer shall comply with the technical requirements and other technical specifications as set out in the Service Description for PTV Cloud Services.
- 4.6 PTV may provide at Customer's request various consulting services which are not part of the PTV Cloud Service, for instance for training, modelling, bespoke software development or software integration ("**Professional Services**"). In such a case:
- The provision of Professional Service is not part of these Terms of Use and shall be negotiated between PTV and the Customer under a separate contract. Obligations related to the PTV Cloud Service on the one hand, and to Professional Services on the other hand, are distinct from one another.
 - The rights of use granted under the PTV Cloud Service are not transferable to the Professional Services.
 - The compensation attached to the Professional Services and any related invoice remain distinct from the compensation and invoices related to the PTV Cloud Service.
- 4.7 Certain PTV Cloud Services can be connected to PTV Products in order to use additional functions of these PTV Products.

5 Third-Party Licenses

- 5.1 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:

- 5.1.1 Third-party components for **Mobility**, available under <http://ptv.to/fq>.
- 5.1.2 Geodata
- **PTV Mobility Licensing Terms for Geodata**, available under https://www.ptvgroup.com/en/ptv_mobility_licensing_terms_geodata_en.pdf.
 - When using maps from the Open Street Map Project ("**OSM**"), the Open Database License applies, available under <https://opendatacommons.org/licenses/odbl/1.0/>.
- 5.2 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.

6 Compensation and payment terms

- 6.1 As a consideration for the use of the PTV Cloud Service, the Customer shall pay to PTV the contractually agreed service fees without deduction.
- 6.2 Should the Customer fail to make the payment within the term of payment ("**Payment Default**"), PTV is entitled, after issuing a prior notice and threat of suspension, to suspend the Customer's access to the PTV Cloud Service until all invoices are paid in full. In the event of a Payment Default, PTV can claim default interest amounting to eight (8) percentage points above the base rate. PTV's right to prove higher damages caused by default remains unaffected. Other claims by PTV due to a Payment Default by the Customer, in particular the right of termination for good cause, remain unaffected.
- 6.3 The Customer can only offset payments with claims that have been ascertained by final judgement or recognized in writing by PTV. The Customer shall only be entitled to exercise a right of retention if the counterclaim is based in the same contractual relationship.
- 6.4 PTV Shall be entitled to change the prices within the scope of its general pricing policy by means of a declaration in text form with effect from the next possible date of termination or expiry, subject to a notice period of three (3) months. Price adjustments shall not apply to periods for which the Customer has already made payments. The contract shall be deemed to have been amended accordingly.

7 Customer's obligations

- 7.1 The Customer may only use the PTV Cloud Service in compliance with the Terms of Use and the statutory provisions. Customer data and applications that the Customer saves or provides using the PTV Cloud Service must not breach applicable law, the principles of morality or the rights of third parties. In particular, any use by the Customer which:

- is discriminatory, racist or inhumane or incite to violence; or
- encourages or endorses criminal activity; or
- contains pornography or breach the law for the protection of children and youth; or
- infringes the personal rights of third parties,

shall be prohibited.

7.2 The Customer may not use any software or other technical devices that alter, expand or jeopardize the functioning of the PTV Cloud Service. In particular, the Customer may not attempt to access the PTV Cloud Service in a manner infringing the technical requirements.

7.3 The Customer shall not

a) except as may be allowed by any applicable law:

- 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

b) subject to sec. 13, 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.

7.4 PTV Cloud Services are subject to certain technical limitations due to the way they are provided over 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 Authorization 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 Warranty

- 9.1 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 writing, including all information useful for resolving the error, in accordance with the process related to the PTV Cloud Service availability described in the Service Level Agreement for PTV Cloud Services. 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. PTV shall refund to the Customer the remuneration already paid pro rata temporis. 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. 11.

- 9.2 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.
- 9.3 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.

10 Intellectual property rights ("IPR") infringements

- 10.1 Claims and defense against alleged IPR infringement
- 10.1.1 If a third party claims the infringement of IPR against the Customer in respect of the use of the PTV Cloud Service for reasons attributable to PTV, the Customer shall notify PTV promptly in writing and shall leave the defense of such claims to PTV insofar as possible.
- 10.1.2 The Customer shall provide all reasonable assistance to PTV in the defense.
- 10.1.3 The Customer shall not be entitled to conclude a settlement with claimants, or to acknowledge their claims, without PTV's prior written approval.
- 10.2 Rectification
- 10.2.1 Insofar as IPR of third parties have been infringed by the PTV Cloud Service for reasons attributable to PTV, PTV may choose to rectify the situation in such a way that the PTV Cloud Service can continue to be used to the full extent by the Customer. In this respect, PTV has the following options:
- a) PTV may obtain a license sufficient for the purposes of these Terms of Use from the third party that holds the infringed IPR, in favor of the Customer;
 - b) PTV may update, modify or replace the PTV Cloud Service that infringes IPR such that the modifications have no impact on the functionality of the PTV Cloud Service, or an impact that is acceptable to the Customer; or
 - c) PTV may terminate the PTV Cloud Service.
- 10.2.2 The Customer may require a different form of rectification if the impact on the functionality of the PTV Cloud Service is reasonably considered significant.

11 Liability, compensation for damages

- 11.1 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.
- 11.2 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.
- 11.3 Any further liability on the part of PTV is excluded.

12 Data security and protection

- 12.1 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) 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, available under https://www.ptvgroup.com/en/data_protection_ptv_cloud_services_and_ptv_software_en.pdf, product-specific for PTV Vision at, TOM under https://www.ptvgroup.com/en/toms_en.pdf.

- 12.2 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.
- 12.3 Upon the Customer's written request, the Parties shall enter into an agreement on order data processing according to Art. 28 GDPR in accordance with the respectively applicable template, available under https://www.ptvgroup.com/en/data_processing_agreement_ptv.pdf.

13 Transfer and assignment

- 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.

14 Changes to these Terms of Use

PTV shall notify the Customer of any changes to this Terms of Use 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, 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.

15 Final provisions

- 15.1 PTV shall be entitled to have the Customer's conformity of the actual use of the PTV Software delivered 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) week's written notice 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 Amendments and supplements are only valid if they are agreed in writing between the Parties. Verbal ancillary agreements are excluded. This also applies to the amendment of this provision.

- 15.4 Should any provision of these Terms of Use be or become invalid, this shall not affect the validity of the remaining provisions. The invalid provision shall be deemed replaced by a valid one which closely approximates the commercial purpose of the invalid provision. The same shall apply in the case of any unintended omission.
- 15.5 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.
- 15.6 Place of performance and jurisdiction for all arguments arising from and in connection with these Terms of Use is Karlsruhe, Germany.