

Ecodesign Directive 2009/125/EC and Consumption Labelling Directive 2010/30/EU for Heating and Water-Heating Equipment, Hot-Water Storage Tanks and Packages

Contract for the Supply of Product Data

to



between

VdZ - Forum für Energieeffizienz in der Gebäudetechnik e.V.,
Oranienburger Str. 3, 10178 Berlin,
represented by the Managing Director (Geschäftsführer), Mr RA Dr Michael Herma, ibid

- hereinafter referred to as: (VdZ) -

and

the manufacturer of products subject to energy labelling (please add)

- hereinafter referred to as:
“(manufacturer)” -

Manufacturer contact:

Telephone number:

Email address:

Preamble

- (1) The European legislator has introduced new ecodesign and energy labelling provisions (Ecodesign Directive 2009/125/EC and Consumption Labelling Directive 2010/30/EU) for heating and water-heating equipment, hot-water storage tanks and packages including the regulations based thereon, which will be applicable as of 26.09.2015. With the new provisions (directives and regulations) in force, said products must be marketed and offered for sale to consumers only by manufacturers, wholesalers and craftspersons if they comply with the labelling provisions of the directives.
- (2) VdZ maintains (with the technical support of a third party) a database in which manufacturers (including but not limited to industrial manufacturers and wholesalers who sell products under their own brands) of heating and water-heating equipment, hot-water storage tanks and packages (including in combination with temperature controls and solar devices) can enter their relevant product data with respect to the legally required product labelling for the sale of the product to consumers (product data). Users of the database may then generate the legally required product or package label when preparing offers of the relevant product (system) in the database via a calculation tool based on the manufacturer's product data.
- (3) The present contract is designed to enable manufacturers to enter their own product data for product labelling in the database operated by VdZ in order to achieve and/or maintain all stages of distribution and at the same time to be connected to the preparation of offers for sale on the part of wholesalers and craftspersons.
- (4) The contract is concluded with the same content with all manufacturers. No individual changes will be made. Differing offers will be made to all manufacturers alike.

Now, therefore, the parties agree as follows:

§ 1 Subject Matter; Territory

- (1) The subject of this contract on part of VdZ (with the technical support of a third party) is making available the above-mentioned database and for manufacturers to enter data relevant to energy labelling.
- (2) The manufacturer agrees to electronically deliver product data for energy labelling under the requirements of the labelling for heating and water-heating equipment, hot-water storage tanks and packages with the manufacturer's data set applicable at the time of the signing of the contract, hereinafter referred to as "product data" to VdZ to be entered into the database maintained by VdZ and granting VdZ the non-exclusive licence to use the data material.
- (3) The product data will be transmitted to VdZ in such a way that VdZ can provide the product data for the duration of the contract in an updated version by the manufacturer on a server to be retrieved by authorised companies. VdZ will decide on each individual user's authorisation concerning the data transmitted by the manufacturer.
- (4) The data required for the platform consist of the article master data and the PDF files for label and fiche: the platform has a maintenance area for the supply of the data. Manufacturers can access the maintenance area after registration. It includes functions to upload, view and release data.
- (5) The article data will be transmitted in an Excel file. The exact structure is defined in the document "Produkttypen Datendefinition.pdf" (annex 1). A template file is available for download at the platform. All articles must be included in an Excel file. All articles which are not included will be deleted from the system. The labels and fiches will be transmitted in a ZIP archive. Upon transfer, an indication can be made whether the provided PDF files are intended to supplement or supersede the data on the server. This also allows for the future supply of individual PDF files.
- (6) After their upload, the data will be uploaded to the maintenance area by the system. The data structure and content will be checked here. The manufacturer will be informed whether any data must be corrected. A list of the required corrections will also be provided.
- (7) After successful processing of the data, the data will be shown to the manufacturer on the platform for release. After release in the system, the data will become part of the public domain and be available to all users in the areas covering article search and packages.
- (8) The contract territory shall be the Federal Republic of Germany and member countries of the European Union who implement the HEATINGlabel platform by concluding the VdZ licence agreement.

§ 2 Granting of Rights

- (1) The manufacturer acknowledges that the database maintained by VdZ is a database within the meaning of the statutory provision of Article 4 II s. 1 UrhG. The manufacturer also acknowledges that it is a database subject to protection under the meaning of Article 87a II UrhG. The parties agree that VdZ is the manufacturer of the database as per the meaning of Article 87a II UrhG. Computer programmes necessary to operate and use the database shall be subject to – possibly additionally – the protection of Article 69a ff UrhG. VdZ shall be the owner of these property rights.

- (2) The manufacturer shall grant to VdZ the - unlimited in time and territory - right to use, process, copy and distribute the product data for the duration of the contract in the database maintained by VdZ, as well as the right to store the product data in the database and make them available to users of the database.
- (3) Moreover, the manufacturer shall grant VdZ the non-exclusive right to register in digitalised or non-digitalised form the product data or excerpts from the product data exclusively for maintaining the database and to unite or have it combined on other databases with other works and data by its service provider; this outlines solely the right of VdZ to maintain bibliographical details and/or search tools in the database with the help of the manufacturers' product data and to thus use data from the database on their own website, organize and show the data according to their own search criteria and make them accessible in this way to other users of the database (craftspersons and/or wholesalers of said products) for enquiry purposes and the preparation of offers, particularly in the form of product labelling. The data shall be used exclusively by VdZ for the specific purpose of fulfilling the obligations under the ecodesign directive 2009/125/EC and the labelling directive 2010/30/EU as well as their regulations. The manufacturer will grant VdZ the following non-exclusive, transferable, unlimited in time and territory rights (including the right to grant sublicenses) in the transmitted content by transmitting product data for the preparation of an offer complying with the legal requirements under the ecodesign directive and the directive on labelling: archiving and database rights, i. e. the right to archive content in any form and particularly to record content in digital form, enter it in databases and store it on all known storage media and on any data carriers, and to connect it to other works or parts of works; the right to reproduction and distribution, i. e. the right to arbitrarily store the content, reproduce the content and make it available or distribute it in electronic or other media as a whole or in part. VdZ shall in particular be permitted to have the aforesaid actions performed by third parties.

§ 3 Restrictions of Use

- (1) As a general rule, the database operated by VdZ is accessible seven days a week for 24 hours a day. However, the database's accessibility may temporarily be restricted for technical reasons, including for example for necessary maintenance work.
- (2) Moreover, the database's accessibility may be restricted due to problems beyond VdZ's control, in particular where inaccessibility is based on the fact that the required technical prerequisites for accessing the database, which must be met by the manufacturer, are temporarily not met, for example in the case of manufacturers' hardware malfunction - when the impairment is based on defects of the data transfer network or lies within the data transfer company's responsibility - that there is a force-majeure event, including but not limited to power cuts, which are beyond VdZ's control.

§ 4 Supply of Product Data

The manufacturer agrees to

provide to VdZ the current version at that time of the data of its product labelling-related products. The manufacturer shall be obliged to keep these product data up-to-date at all times. The manufacturer shall immediately update the data in the database upon changes in the relevant data set. VdZ shall reserve technical instructions on the transfer of data and necessary changes concerning the supply of data. In this respect, VdZ will inform the manufacturer on technical changes in a timely manner. Each party will bear its implementing costs.

§ 5 Remuneration

- (1) The manufacturer shall be obliged to pay to VdZ a fee of EUR 1,000 per calendar year plus statutory value-added tax for using the database and the option of entering product data in the database. The fee will be payable on 1st January of each year in advance or at the conclusion of the contract. VdZ will review this fee every year.
- (2) For contracts signed as of 01.01.2016, an additional one-off acceptance fee of EUR 500 plus statutory value-added tax will be payable.
- (3) The manufacturer will authorise VdZ to debit its account with the payable annual fee by means of a direct debit (Sepa direct debit mandate). To this end, the manufacturer will separately instruct its credit institution to cash the direct debit carried out by VdZ.

§ 6 Warranty / Liability

- (1) Only the industrial manufacturer will be responsible for the legality or accuracy of the content upon entering its product data. VdZ shall be only a technical service provider and as such will act neither as an agent or representative of the manufacturer nor in any other capacity on its behalf. VdZ will not make such content its own. Pursuant to Article 7 Subsection 2 German Telemedia Law (TMG), VdZ shall not be obliged to monitor the information transmitted or stored by VdZ or to search for circumstances indicating unlawful behaviour.
- (2) The manufacturer shall guarantee that the product data entered in the database do not violate any copyrights, trademark rights, individual rights and/or other rights of third parties. VdZ shall not assume any liability in addition to this for the accuracy of the data and its content to be complete. The manufacturer is aware that in this respect, VdZ must rely on accurate information from the manufacturers.
- (3) VdZ shall be liable in principle under this agreement for damage to the manufacturer caused intentionally or arising from gross negligence on the part of VdZ or its statutory representatives or persons employed by VdZ in the performance of its contractual obligations.
- (4) VdZ shall be liable only for the loss of a manufacturer's data in the database if the manufacturer has ensured that the data can be restored with reasonable effort by creating backup copies or other forms of duplicate. VdZ's liability shall be limited here to the typical effort involved in restoring the data.
- (5) VdZ shall not be liable for the fitness of the performance for achieving a particular economic success, particularly not for installations and/or services beyond its own scope of influence and non-availability of the database due to problems with the internet etc.

- (6) The manufacturer shall be liable for damage resulting from incorrect entry of data into the database.

§ 7 Data Security and Declaration on data protection

- (1) VdZ's servers are secured according to the state of the art, particularly by firewalls etc. However, the manufacturer is aware that all participants in the database face the danger that transmitted data may be intercepted on transmission. This does not apply only to the exchange of data via email which leave the system, but also to all other data transmission. Therefore, the confidentiality of the data transmitted as part of using the database cannot be guaranteed.
- (2) The manufacturer agrees that VdZ will store in anonymised form information and data about the process of creating product labelling, as well as users' behaviour in implementing the generation of product labels and will use them only in this anonymised form for marketing purposes, for example for drawing up statistics and presentations.
- (3) VdZ shall also be entitled during the term of this agreement to process and store the product data received from the manufacturer in connection with the business relationship under consideration of the provisions of the applicable data protection regulations.

§ 8 Term

- (1) The agreement concluded between VdZ and the manufacturer shall apply in principle for an indefinite period of time. Each party may terminate the contract without giving any reason with three months' notice to the end of a calendar year.
- (2) This shall not affect the parties' right to extraordinary termination of the contract for a serious reason.
- (3) Any notice of termination must be made in writing. The time of receipt of the letter by the recipient of the notice of termination shall be authoritative.

§ 9 Competition and Antitrust Law

- (1) The parties agree that the sole purpose of the product database is the user-friendly implementation of the product labelling obligations throughout the distribution chain.
- (2) The parties explicitly commit to the economic order and will always respect the limits of antitrust law in their cooperation. They will in particular not make any market sharing agreements or collude on prices, exchange strategic information or otherwise behave contrary to competition law.

§ 10 Final Regulations

- (1) This agreement exhaustively reproduces the content of the contractual agreements between the parties and supersedes any prior agreements between the parties with respect to the object of the contract. No supplementary agreements, including any oral agreements, have been made. Any modifications or amendments of this agreement must be made in writing and signed by the parties. The same shall apply to a waiver of the requirement to be in written form and signed by the parties.
- (2) Should a provision of this agreement be or become invalid or unenforceable, the validity or enforceability of the remaining provisions shall not be affected. The same shall apply if a loophole or regulatory gap in the contract is discovered. In these cases, the parties will agree on a provision that comes as close as possible to the invalid or unenforceable provision's economic intent.
- (3) The law of the Federal Republic of Germany shall apply.
- (4) The parties agree on Berlin as the sole place of jurisdiction.

Translation - not legally binding