

## Terms of Use of the DGNB Navigator for Users

By registering, users are declaring to DGNB GmbH (hereinafter "**DGNB**") that they agree to the following Terms of Use of the DGNB Navigator.

### 1. Description of Services

- 1.1 The DGNB Navigator is a data bank operated by DGNB and accessible over the Internet.
- 1.2 The DGNB Navigator provides information regarding the sustainability of construction products, construction materials and system products (together referred to hereinafter as "**Construction Products**"), such as their significance for protecting health, ecological aspects and their environmental impact (hereinafter "Sustainability Information"). The information made available on the DGNB Navigator constitutes building blocks for building certification but is itself not proof of certification. Specifically, the DGNB Navigator does not provide information regarding a building's safety, the suitability or usability of Construction Products or the legal permissibility of the use of a Construction Product for a particular project; DGNB does not conduct such tests.
- 1.3 The manufacturers of the Construction Products provide DGNB with the Sustainability Information and possible content and graphics of the product. DGNB only investigates whether the data has been correctly copied from the product-related information documentation provided by the manufacturer. DGNB is not obligated to investigate whether the Sustainability Information and/or the documentation provided by the manufacturer is current, complete and/or correct. Furthermore DGNB is not obligated to investigate whether the manufacturer holds the right of the submitted content or graphics.
- 1.4 The Sustainability Information is subject to change, e.g. due to new tests or updated manufacturers' information. DGNB attempts to ensure that the Sustainability Information it makes available is current in that it requires the manufacturers of the Construction Products to keep their information current. However, DGNB cannot itself ensure that the Sustainability Information is current. Consequently, before deciding to purchase or use one of the Construction Products, users should take responsibility for making sure that the Sustainability Information is still current.
- 1.5 DGNB attempts to ensure that the DGNB Navigator is available online with the least possible amount of restriction; however, due to technical and operational circumstances, DGNB cannot guarantee 24-hour access to the DGNB Navigator. Thus, DGNB is not liable to provide continuous availability. In particular, maintenance work on the data bank can restrict or temporarily preclude access to the DGNB Navigator. On the home page of the DGNB Navigator, DGNB will announce planned maintenance work, including its expected duration, at least 48 hours before it commences. In the event of unforeseen system failure, DGNB will immediately take suitable steps to attempt to restore the availability of the DGNB Navigator.

- 1.6 These stipulations regarding the use of the DGNB Navigator have no effect on any rights and obligations arising from any other agreements between DGNB and the user. Unless expressly agreed, the user has no right to demand use of the DGNB Navigator.

## **2. Payment**

- 2.1 The use of the DGNB Navigator for research and for calling up the Sustainability Information is currently free of charge. However, DGNB reserves the right to demand payment for the use of the DGNB Navigator in the future; but this will be announced in advance so that the users have time to give notice of termination and stop using the DGNB Navigator if they do not wish to pay. In such a case, no charge shall be made for previous use.
- 2.2 Users shall bear the costs of a) setting up the necessary telecommunications connections to the servers on which the DGNB Navigator is operated and b) procuring the hardware necessary to communicate with the DGNB Navigator.

## **3. Use of the DGNB Navigators and the Sustainability Information**

- 3.1 Registration is required for use of the DGNB Navigator. After registering, each user is given an access identity consisting of a login name and a temporary password by DGNB. The password is necessary to log in to the DGNB Navigator. Users can later change their temporary password to one they have chosen themselves.
- 3.2 By registering, a user makes an offer to enter into a contract regarding the use of the DGNB Navigator. The contract regarding the use of the DGNB Navigator enters into effect when DGNB sends the user an access ID consisting of a login name and a temporary password.
- 3.3 Each user must keep his/her password secret. Each user is responsible for the use of the DGNB Navigator by a third party to the same extent as for that user's own use if and to the extent that such use takes place using the user's login name and password unless the user can provide evidence that she/he is not responsible for such unauthorized use.
- 3.4 The user is permitted to use the DGNB Navigator and the Sustainability Information as well as all other content on the DGNB Navigator website only as long as he/she is registered and only for her/his own purposes and in connection with his/her own work. The user is not permitted to pass the Sustainability Information or other contents of the DGNB Navigator website along or make it accessible to third parties in return for remuneration. Specifically, the sale of the Sustainability Information and/or other content found on the DGNB Navigator website to third parties is prohibited. However, it is permissible to pass the Sustainability Information along in the context of work that a user does for a third party (e.g. an architect's planning services) for which passing along the Sustainability Information constitutes a subordinate service for which no separate remuneration is charged or paid.
- 3.5 The user is not permitted to transfer the Sustainability Information or other content of the DGNB Navigator website – whether completely or in part – to other data banks (online or offline).

3.6 Each manufacturer of one of the Construction Products retains any and all rights in its relationship to the user. Thus, the user shall bear full responsibility for determining whether and, if so, to what extent, he/she is permitted to pass along the Sustainability Information in light of such manufacturer's rights.

#### **4. Liability**

4.1 DGNB is liable to the user for compensation for expenses and damage to the extent legally mandated for culpable breach of so-called "cardinal obligations" (hereinafter in No. 4: "Compensation"). Cardinal obligations as used herein are all obligations whose breach endangers the achievement of the contractual purpose, as well as all obligations the fulfillment of which makes it at all possible to implement the contract, and with which the user can usually expect compliance. However, if and to the extent that the breach of a cardinal obligation is a result of merely slight negligence and has not resulted in damage to life, body or health, the user's claims for Compensation shall be limited to the amount of loss or damage typically foreseeable.

4.2 DGNB is also liable to the user pursuant to the provisions of the German Product Liability Act; in cases of intention or gross negligence; for damage to life, body or health; if DGNB has assumed a warranty and/or in any other case of legally mandated liability, pursuant to the applicable law in each case.

4.3 Any other claims for Compensation by the user against DGNB – regardless of their legal basis, in particular material defect, defect of title, and/or breach of other contractual obligations by DGNB, its legal representatives, employees or vicarious agents, arising from Art. 311a of the German Civil Code or from unauthorized acts – are precluded.

4.4 If and to the extent that, pursuant to the above stipulations, DGNB's liability is restricted or precluded, this shall also apply to the personal liability of its legal representatives, employees and/or vicarious agents.

4.5 This shall not affect any legal liability privileges, e.g. pursuant to Art. 7-10 of the German Broadcast Media Act [TMG].

4.6 The above stipulations do not constitute a change in the burden of proof to the disadvantage of the user.

4.7 The user's Compensation claims shall become statute-barred according to the statute of limitations.

#### **5. Ending the Use Relationship**

5.1 The user can at any time end the use relationship instituted by the registration by deleting her/his user ID; it is not necessary to have or cite grounds.

5.2 DGNB can terminate the use relationship by means of 3 (three) months' regular notice of termination. Such notice can be given in writing or electronically (by e-mail or fax).

5.3 DGNB can also terminate the use relationship without notice for important grounds. Such important grounds shall include but not be limited to a grave, culpable breach by the user of his/her obligations pursuant to No. 3 of these Terms of Use, e.g. in that he/she uses the DGNB Navigator contrary to the stipulations of Nos. 3.4 through 3.6.

## **6. Miscellaneous**

6.1 Should any provision of these Terms of Use be or become legally ineffective or unenforceable in whole or in part, the validity of the remaining provisions shall not be affected thereby. In place of any ineffective or unenforceable provisions the parties shall agree an arrangement, which comes as close as legally permissible to the actual and commercial intent. The same applies to any gaps in these Terms of Use.

6.2 These Terms of Use shall be subject to and construed according to the law of the Federal Republic of Germany. The UN Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

6.3 If the user is a businessperson, entity incorporated under (German) public law or a specialized agency subject to (German) public law or has no general place of jurisdiction in Germany, the sole and exclusive place of jurisdiction for all property law disputes arising from these Terms of Use shall be Stuttgart, Germany. Nevertheless, DGNB is entitled, at its discretion, to bring legal action against the user at the user's general place of jurisdiction or any other court having general jurisdiction.

6.4 Online Dispute Resolution between firms and consumers in accordance with Article 14(1) of Council Regulation (EU) No 524/2013 and Consumer Dispute Settlement in accordance with § 36(1) Consumer Dispute Resolution Act (Verbraucherstreitbeilegungsgesetz):

The European Commission provides an Online Dispute Resolution platform (ODR platform). You will find the ODR platform in the internet at <http://ec.europa.eu/consumers/odr>.

We are currently not participating in the dispute settlement procedure before the Consumer Dispute Settlement Body.

Status as on January 31, 2017

DGNB GmbH