

Terms of Use and Licence Conditions

- MDESIGN is a product by TEDATA GmbH -

1. Applicability of the contractual terms and conditions

(1) Unless otherwise agreed, these Terms of Use and Licence Conditions alone shall govern the distribution of standard software by TEDATA GmbH, Königsallee 45, 44789 Bochum ("TEDATA") as a licence for sale or lease as well as any agreed services and precontractual obligations in the course of business with commercial entities. This applies also in particular to products marketed under the "MDESIGN" trademark. Additionally, the General Terms and Conditions of Business of TEDATA in the version accessible at www.tedata.de/de/agb at the point of the submission of the purchaser's declaration shall apply, unless the contracting parties agree otherwise in writing. Other contractual terms and conditions shall not become a component of the contract, even where TEDATA does not expressly raise an objection to them.

(2) Contracts shall only be entered into with commercial entities. Any contracts with consumers shall be governed by the statutory provisions, with the exception of clauses 3, 4 and 7.

(3) Sections 433 et seq. German Civil Code (BGB) shall apply to the supply of the standard software. Sections 611 et seq. BGB shall apply to supplementary services (e.g. installation, parametrisation, training). Rental services shall be governed by sections 535 BGB.

2. Conclusion of contract

(1) Offers made by TEDATA are non-binding and subject to confirmation, unless the offer is indicated as being binding in writing. A legal obligation shall only come about where a contract is signed by both parties, an order is confirmed in writing by TEDATA, and additionally where TEDATA begins rendering the services following the order. TEDATA may request written confirmations of verbal contractual declarations made by the purchaser.

(2) The purchaser shall be bound for a period of four weeks by its declarations to enter into a contract.

(3) Separate contracts shall be entered into for all other kinds of supplies and services (e.g. supply of hardware, software maintenance, installation and parametrisation of software, training).

3. Contractual subject matter, scope of services

(1) The subject matter of these contractual terms and conditions comprises solely the provision of standard software and the grant of usage rights pursuant to clause 4, in addition to the services ordered at the same time.

(2) Prior to entering into the contract, the purchaser has verified that the specification of the software corresponds to its wishes and requirements. It is aware of the key functional features and conditions of the software.

(3) The contract signed by both parties, the order confirmation from TEDATA or otherwise TEDATA's offer shall be material in establishing the scope, type and quality of the supplies and services. Other information or requirements shall only become a contractual component if the contracting parties have agreed such in writing or TEDATA has confirmed them in writing. Any retrospective alterations of the scope of services require written agreement or written confirmation by TEDATA.

(4) Product descriptions, representations, test programs, etc., constitute descriptions of services and not warranties. A warranty requires a written declaration by TEDATA's management.

(5) The purchaser shall be granted access to the software and the user manual. The technology for supplying the software shall be based on the agreements; unless otherwise agreed, the program and manual shall be made available online. The purchaser shall not be entitled to receipt of the source code.

(6) The software may be made available in various ways (physical software release, download, online or cloud solution). The following provisions are material in this respect, unless otherwise agreed:

- a) Physical software/download software: At the election of TEDATA, the software shall be provided on data storage media or made available for download permanently or temporarily.
- b) Online or cloud solution: This constitutes a grant of the use of the software (against payment and limited to the contractual term) via the internet as well as the provision of storage space on the provider's servers. The special provisions for online or cloud solutions in Appendix 1 shall apply in this respect in addition to the following stipulations.

(7) Customer care and other services are not a constituent part of the user agreement, unless they are expressly included.

4. Purchaser's rights to the software

(1) The software (program and user manual) is protected by law. Copyright, patent rights, trademark rights and all other intellectual property rights to the software as well as other items that TEDATA transfers or makes available to the purchaser in the course of contract initiation and execution shall be solely to the benefit of TEDATA within the relationship between the contracting parties. Where such rights are to the benefit of third parties, TEDATA shall have corresponding usage rights.

(2) The purchaser shall be granted simple, i.e. non-sublicensable and non-transferrable, rights to use the software for the contractually stipulated number of individual-user or network access authorisations limited to the contractual term for the supplied version of the software. Use of the software via a server solution (e.g. CITRIX) requires the express consent of TEDATA and a corresponding network licence. The single-user authorisation must not be circumvented.

(3) The purchaser is only entitled to use the program to process its own data within its own enterprise for its own purposes. Any additional contractual usage rules (e.g. limitation to a number of workstations or persons) must be facilitated technically and complied with practically. TEDATA hereby grants to the purchaser the requisite authorisations for such use as a simple usage right, including the right to rectify defects. Clause 13 shall apply for the duration of the usage right.

(4) The purchaser is not entitled to pass the software or access permissions on to a third party.

(5) The purchaser may only decompile the interface information of the programs within the limitations of section 69 e German Copyright Act (UrhG) and only if it has notified TEDATA of its intention in writing and has requested receipt of the requisite interface information with at least two weeks' notice. Clause 14 shall apply to all knowledge and information that the purchaser acquires about the software in the course of the decompilation. Before any involvement of third parties, it shall supply to TEDATA a written declaration from the third party that the third party directly undertakes *vis-à-vis* TEDATA to comply with the stipulations set out in clauses 4 and 14.

(6) All other usage activities – in particular rental, lending and dissemination in physical or non-physical form, the use of software by and on behalf of third parties (e.g. by means of outsourcing, data-centre activities, application service providing) – are not permitted without the prior written consent of TEDATA.

(7) Contractual subject matter, documents, recommendations, test programs, etc., of TEDATA to which the purchaser gains access prior to or following the conclusion of the contract shall be deemed intellectual property and commercial and company secrets of TEDATA. They may not be used in any way without the written permission of TEDATA and confidentiality shall be maintained over them pursuant to clause 14.

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5. Performance period, delays, place of performance

(1) Information on delivery and service times are non-binding unless they have been stated as being binding in writing by TEDATA. TEDATA may perform partial services provided the supplied parts can be reasonably used by the purchaser.

(2) Delivery and service periods shall be extended by the period in which the purchaser is in default of payment under the contract, and by the period in which TEDATA is impeded from rendering the delivery or service due to circumstances for which it is not at fault plus a reasonable ramp-up period following the end of the cause of the impediment. These circumstances also include *force majeure* and industrial disputes. Periods shall also be deemed extended by such time during which the purchaser fails to render a cooperation obligation, e.g. fails to provide information, to enable access, to supply required materials/services or to make employees available.

(3) If the contracting parties retrospectively agree on other or additional services that affect the agreed periods, these periods shall be extended by a reasonable timeframe.

(4) Any reminders and deadlines issued by the purchaser must be in writing to be effective. Any grace period must be reasonable. A deadline of less than two weeks shall only be reasonable in the event of particular urgency.

(5) The place of performance shall be the place at which the service in question is to be rendered. Unless otherwise agreed, the registered office of TEDATA shall be the place of performance for all services arising under and in connection with this contract.

6. Contractual obligation and contractual termination

(1) Any termination of the further exchange of services (e.g. on withdrawal, diminution, termination for good cause, compensation in lieu of performance) must always be forewarned with statement of the reason and subject to a reasonable rectification period being set (usually at least two weeks) and may only be declared within two weeks of the deadline expiring. No deadline needs to be set in the cases required by law (cf. section 323(2) BGB). The party that is largely or wholly responsible for the fault may not demand rescission.

(2) All declarations in this context must be in writing to be effective.

7. Remuneration, payment

(1) The agreed remuneration shall be payable without deduction within 14 days of provision of the software and receipt of the invoice by the purchaser, unless otherwise agreed.

(2) Travel costs, expenses, accessories, shipping costs and telecommunication costs shall be charged additionally at cost. Additional services requested by the purchaser (e.g. consultation and support during program installation) shall be invoiced in accordance with the current TEDATA price list.

(3) All prices are net of VAT.

(4) The purchaser may only set off claims that have been acknowledged by TEDATA or legally established. With the exception of cases covered by section 354 a of the German Commercial Code (HGB), the purchaser may only assign claims under this contract to third parties with the prior written consent of TEDATA. The purchaser shall only be entitled to a right of retention or a defence of contractual non-fulfilment within the context of the contractual relationship.

8. Purchaser's obligations

(1) The purchaser undertakes to inspect all contractual items from TEDATA without undue delay following delivery or being made available in accordance with the provisions of commercial law (section 377 HGB) and to report any defects in writing with a precise description of the defect. The purchaser shall test each module for usability in the specific situation before commencing live use. This also applies to programs that the purchaser obtains in the course of a warranty and a maintenance agreement.

(2) The purchaser shall take adequate precautions should the program not operate properly in full or in part (e.g. data backup, documentation of software use, fault diagnosis, regular review of results, emergency planning). It is the purchaser's responsibility to ensure the functionality of the program's operating environment.

9. Material defects

(1) At the point of the transfer of risk, the software has the agreed quality and is suitable for the contractually intended use and, in the absence of agreement, for standard use. It satisfies the criterion of practical suitability and exhibits the standard quality for software of this kind; however, it is not free from errors. A functional impairment of the program resulting from hardware defects, environmental conditions, incorrect operation, etc., shall not constitute a defect. Any minor diminutions of quality shall be disregarded.

(2) In the event of material defects, TEDATA may render subsequent performance in the first instance. Subsequent performance shall be effected at the election of TEDATA by rectifying the defect, providing software that does not exhibit the defect, or by TEDATA demonstrating ways of avoiding the effects of the defect. At least three rectification attempts shall be accepted in the event of a defect. The purchaser shall accept an equivalent new program version or the equivalent previous program version without the defect if it is reasonable for it to do so. The installation of software (patches or new versions) is the responsibility of the purchaser.

(3) The purchaser shall assist TEDATA in the fault analysis and rectification of defects in particular by describing issues occurring in concrete terms, by providing comprehensive information to TEDATA and by granting TEDATA the requisite time and opportunity to rectify the defect. TEDATA may choose to rectify the defect on site or at its own premises. TEDATA may also perform services by way of remote maintenance. The purchaser shall, at its own expense, ensure that the requisite technical conditions are in place and grant TEDATA electronic access to the software subject to corresponding advance notice.

(4) The rectification of defects shall be performed within a timeframe during the ordinary course of business and operational resources such as is reasonable for TEDATA. The provisional rectification of defects through workarounds shall be deemed reasonable. Minor or merely temporary restrictions or impediments shall be deemed acceptable. Defects that do not impair operations may be rectified with a new program version.

(5) No entitlement to updates or enhancements applies. The supply of a new program version shall replace the supplied version, provided it is accepted by the purchaser by way of update. In this case, there shall no longer be any entitlement to the restoration of old versions. If the functionality exceeds the contractually agreed scope, no warranty rights to these voluntarily supplied functions shall accrue to the purchaser.

(6) TEDATA may demand remuneration for additional expenditure due to the software being modified, deployed outside the specified environment or incorrectly operated. It may demand compensation if no defects are found and the purchaser did not raise the fault report without being negligent. The purchaser shall bear the burden of proof. Section 254 BGB applies accordingly.

(7) If TEDATA definitively refuses to render subsequent performance or the subsequent performance conclusively fails or the subsequent performance is not reasonable for the purchaser, the purchaser may either withdraw from the contract within the scope of clause 6 or reasonably reduce the remuneration and additionally demand compensation or reimbursement of expenses pursuant to clause 11. The claims shall become time-barred pursuant to clause 12.

10. Legal defects

(1) TEDATA warrants that the contractually compliant use of the software by the purchaser is not precluded by any third-party rights. In the event of legal defects, TEDATA shall provide a warranty by providing, at its election, the purchaser with a legally sound capability to use the software or equivalent software.

(2) The purchaser shall notify TEDATA in writing without undue delay if any third parties assert intellectual property rights (e.g. copyright or patent rights) to the software. TEDATA shall support the purchaser in defending against the third-party challenges by providing consultancy and information.

(3) Clause 9(2), (6) and (7) apply accordingly.

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11. Liability

(1) TEDATA shall only provide compensation or reimburse wasted expenditure, regardless of the legal grounds (e.g. due to contractual obligations under legal or similar transactions, material and legal defects, breaches of duty and tortious acts), to the following extent:

- a) Liability in the event of wilful misconduct, fraudulent intent and under a warranty is unlimited.
- b) In the event of gross negligence, TEDATA shall be liable to the extent of the typical loss foreseeable at the point of contractual conclusion.
- c) In the event of the breach of a cardinal obligation due to ordinary negligence (obligation whose fulfilment is essential for the proper execution of the contract and on compliance with which the contractual partner relies and may normally rely and which, if breached, jeopardises the attainment of the contractual purpose), TEDATA shall be liable to the extent of the typical loss foreseeable at the point of contractual conclusion.

(2) TEDATA may raise the plea of contributory negligence. In particular, the purchaser has an obligation to ensure data backup and defence against malware, in each case in accordance with the latest technology.

(3) The statutory provisions apply without restrictions in the event of death, personal injury or harm to health and for claims under the German Product Liability Act (ProdHaftG).

12. Limitation

(1) The limitation period is

- a) In the event of material defects: one year from provision of the software for claims for the repayment of the purchase price due to withdrawal or diminution, albeit no less than three months from the submission of the effective declaration of withdrawal or diminution for properly reported defects;
- b) One year for other claims due to material defects;
- c) Two years for claims due to legal defects if the legal defect does not constitute a third-party right on the basis of which the third party may demand surrender of the items specified in clause 3 or the cessation of their use;
- d) Two years for claims for compensation or the reimbursement of wasted expenditure not due to material or legal defects; the period shall begin at the point in time at which the purchaser becomes aware of the circumstances giving rise to the claim or ought to have acquired knowledge in the absence of gross negligence.

(2) The limitation shall take effect no later than on expiry of the maximum periods specified in clause 199 BGB. Paragraph 1 shall not apply in the event of compensation and reimbursement of expenditure resulting from intentional misconduct, gross negligence, warranty, fraudulent intent and in the cases specified in clause 11(3).

13. Commencement and cessation of the purchaser's rights

(1) Title to the supplied goods and the rights set out under clause 4 shall only pass to the purchaser on full payment of the contractual remuneration. Prior to that point, the purchaser shall have a merely preliminary, merely contractual usage right that is revocable under paragraph 2.

(2) TEDATA may terminate the rights under clause 4 for good cause subject to the requirements of clause 6. Good cause shall be deemed to apply if, taking account of all circumstances of the individual case and consideration of both parties' interests, it is not reasonable for TEDATA for the software to remain permanently with the purchaser, in particular if the purchaser is in substantial breach of clause 4.

(3) If no rights accrue under clause 4 or if they come to an end, TEDATA may demand from the purchaser the return of the entrusted contractual items or the written assurance that they have been destroyed, and also the deletion or destruction of all copies of the contractual items and the written assurance that this has happened.

(4) The usage right is dependent on this contract continuing to remain in force. It shall be for an indefinite term, unless otherwise agreed by the parties. However, the usage right only relates to the version

provided. There is no obligation to provide an update or guarantee operability.

14. Confidentiality and data protection

(1) The contracting parties undertake to treat in confidence all items (e.g. software, documents, information) that they acquire or become aware of from the other contracting party prior to or during contractual performance that are protected by law or contain commercial or company secrets or are marked as being confidential, including after the end of the contract, unless they are in the public domain without a breach of the confidentiality obligation having been committed. The contracting parties shall store and secure these items such that third-party access is not possible.

(2) The purchaser shall only make the items available to those employees and other third parties who require access in order to perform their duties. It shall notify these persons of their requirement to maintain confidentiality over the items.

(3) TEDATA shall process the purchaser's data required to perform the transaction in accordance with the provisions of data protection legislation. TEDATA may name the purchaser as a reference client following successful performance of the services.

15. Closing remarks

(1) All amendments or addenda to this contract must be made in writing to take effect. This requirement for the written form may only be dispensed with in writing. Transmission in text form, in particular via fax or email, shall also be deemed to satisfy the requirement for the written form.

(2) The law of the Federal Republic of Germany shall apply under the exclusion of conflict of laws provisions and the UN Convention on the Sale of Goods. The place of performance and the place of jurisdiction for all disputes arising out of and in connection with this contract, for contracts with commercial entities, is the place of the registered office of TEDATA.

(3) In the event of a dispute, the original German version of these Terms of Use and Licence Conditions and its Appendix shall be considered the definitive and binding version.

Appendix 1: Special provisions for online or cloud solutions

Online or cloud solutions contain rental elements that are predominantly subject to the following special provisions.

1. Services by TEDATA; software and storage space

(1) Depending on the selected package, TEDATA shall grant to the purchaser the use of the respective accessible version of the software for the agreed number of authorised users via the internet

- a) By means of access through a browser or
- b) By means of a cloud solution chosen by TEDATA (e.g. Amazon AppStream).

(2) TEDATA guarantees the functionality and availability of the software during the term of the contractual relationship and shall maintain it in a condition suited to contractually compliant use.

(3) Following the conclusion of the contract, TEDATA shall transmit the unique user access data for the corresponding number of authorised users to the purchaser in electronic form.

(4) The user documentation may be viewed while the software is being used.

(5) TEDATA may update and develop the software at any time and in particular modify it due to altered legal circumstances, technical developments or to improve IT security. TEDATA shall take the purchaser's legitimate interests into account as far as is reasonable. However, there is no obligation to do so. The purchaser shall have a special right of termination should its legitimate interests be materially impaired.

(6) TEDATA is not obliged to effect a modification in line with the purchaser's individual requirements or IT environment unless otherwise agreed by the parties.

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(7) TEDATA shall regularly maintain the software and notify the purchasers accordingly in good time. The maintenance shall be performed regularly outside the purchaser's standard business hours unless maintenance needs to be performed at a different time on cogent grounds.

(8) TEDATA shall provide the purchaser with storage space on its servers up to the standard extent of a single-user licence for storing data and in order to use the software. TEDATA shall ensure that the data is retrievable in the course of the use of the software.

(9) TEDATA shall not be liable for any storage obligation or duty of care with regard to the stored data. The purchaser shall bear sole responsibility for ensuring adequate backup.

(10) The purchaser shall remain the owner of the data stored on TEDATA's servers.

2. Scope of use and usage rights

(1) The purchaser will not be supplied with the software in physical form.

(2) The purchaser shall be granted simple, i.e. non-sublicensable and non-transferrable, rights to use the software for the contractually stipulated number of users limited to the contractual term for the version of the software retrievable in each case by way of access via a browser in accordance with the following provisions. The licences shall be issued on a personalised basis in the agreed scope. If a user name needs to be changed in the context of the agreed licences, the purchaser shall notify TEDATA. Use of the software via a server solution (e.g. CITRIX) requires the express consent of TEDATA and a corresponding network licence. The single-user authorisation must not be circumvented.

(3) The purchaser may only use the software in the course of its own commercial activities by its own personnel. The purchaser is not entitled to use the software any for purposes beyond these.

3. Client support and other services

TEDATA shall set up a support service for purchasers to deal with queries on software functionality. This may also take place via a service provider. Queries may be submitted via the support hotline specified on the TEDATA website or via email. The queries will be dealt with in the order in which they are received.

4. Service levels; fault elimination

(1) TEDATA shall grant an overall service-time availability at the handover point of at least 99% per month. The handover point is the router output of the TEDATA data centre.

(2) Availability is deemed to be the purchaser's ability to use all main features of the software. Maintenance times as well as disruption times subject to the rectification time are deemed to be availability times of the software. Times concerning minor faults are not included in the calculation of availability. TEDATA's measuring instruments in the data centre are material for establishing the duration of the availability.

(3) The purchaser shall report and provide evidence of faults without undue delay. Reporting and rectification of faults is assured from Monday to Thursday (with the exception of national holidays in Germany) between 8:00 a.m. and 12:30 p.m. (CET) and from 1:30 p.m. to 5:00 p.m. (CET) and on Fridays (with the exception of national holidays in Germany) between 8:00 a.m. and 12:30 p.m. (CET) (service times).

(4) TEDATA shall rectify severe faults (the software overall or a principal function of the software cannot be used) as quickly as possible following receipt of the report of the fault – if the report is made during the service times (rectification time). If it is foreseeable that the fault cannot be rectified promptly, TEDATA shall notify the purchaser accordingly without undue delay and inform it of the anticipated rectification time.

(5) Other major faults (principal or secondary functions of the software are disrupted, but can be used; or other non-minor faults) shall be rectified within a reasonable timeframe within regular business hours and operational resources (rectification time).

(6) The rectification of minor faults is at the discretion of TEDATA.

(7) TEDATA shall only be liable for non-compliance with the system availability if TEDATA is responsible for the non-compliance. In particular, TEDATA shall not be liable for

- Outages for which TEDATA is not directly at fault, in particular external DNS and routing issues, attacks on the TEDATA network infrastructure (DDoS/viruses) and outages of parts of the internet outside the sphere of control of TEDATA, which may result in incorrect measurements.
- Outages due to the fact that the purchaser's own applications are used improperly or systems do not comply with the guidelines.
- Outages that were incorrectly reported to the purchaser due to errors in internal or external monitoring.
- Outages caused by factors outside the reasonable control of TEDATA, including an event of *force majeure* or problems of internet access as well as comparable problems that fall outside the demarcation point of the included products and services.
- Outages caused by the purchaser's equipment, software or other technology and/or equipment, software or other technology of a third party (with the exception of third-party equipment under the control of TEDATA).

(8) If the guaranteed system availability cannot be complied with, TEDATA shall issue a credit note to the client when the client reports a shortfall of availability. This credit note may generally only be requested on expiry of the month affected by the non-compliance. Timeliness of receipt shall be gauged by the date of the postmark or email receipt. The credit note shall be calculated as follows:

Guaranteed value as monthly average	99%	Credit note as a proportion of fixed monthly costs
Availability	< 99%	10%
	< 90%	20%
	< 80%	50%

5. Purchaser's obligations

(1) The purchaser shall deploy state-of-the-art methods to protect the access data transferred to it from third-party access and to store it. The purchaser shall ensure that any use complies with the contractually agreed scope. TEDATA shall be notified of any unauthorised access without undue delay.

(2) The purchaser undertakes not to use the storage space to store any data the use of which breaches applicable law, official decrees, third-party rights or agreements with third parties.

(3) The purchaser shall inspect the data before storage or use for viruses or other harmful components and deploy corresponding measures (e.g. anti-virus programs) in accordance with the latest technology.

(4) The purchaser shall regularly perform adequate data backups at its own responsibility.

6. Conditions governing remuneration and payment

(1) The purchaser shall pay the agreed remuneration to TEDATA on a monthly basis.

(2) The remuneration payable monthly shall be adjusted in the event of changes to the number of users or the volume of storage space.

(3) Invoices are issued at the start of a usage period. The invoice is payable within 14 days.

7. Contractual term and termination

(1) The contract shall run for the agreed duration. Unless specifically agreed, the contract shall take effect on the transfer of the access data by TEDATA and shall be entered into for an indeterminate period. In this case, the minimum contract term shall be three months.

(2) The contract may be terminated by either party with a notice period of one month to the end of a month.

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(3) This is without prejudice to the right to termination without notice for good cause. Termination must be in writing in any event.

(4) TEDATA shall adequately assist the purchaser at its own expense following termination of the contract in the re-transfer or back-up of the data.

(5) TEDATA shall irrevocably delete all of the purchaser's data remaining on its servers 30 days after the end of the contractual relationship. TEDATA shall not have the benefit of any rights of retention or lien over the data.

8. Force majeure

(1) If an event of force majeure results in TEDATA not being able to satisfy its obligations at all, in full or not in a timely manner, it shall notify the purchaser without undue delay of the type of event and the anticipated effects on its contractual obligations, in particular on the rendering of the contractual services.

(2) TEDATA shall be relieved of its duty to fulfil its contractual obligations for the duration of the event of force majeure. The purchaser's obligation to provide consideration shall lapse accordingly. On cessation of the force majeure event, TEDATA shall give notice thereof without undue delay and shall continue to satisfy its contractual obligations. Accordingly, the obligation to provide consideration shall similarly be revived.