



General Terms and Conditions for Deliveries and Services

Version 1.6

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Daimler TSS GmbH
Wilhelm-Runge-Straße 11
89081 Ulm
Telefon +49 731 505-06
Telefax +49 731 505-65 99
tss@daimler.com
www.daimler-tss.com

Domicile and Court of Registry: Ulm, Commercial Register No.: 3844
Management: Martin Haselbach (Chairperson), Steffen Bäuerle

SECTION 1 OBJECT

- 1.1 The following General Terms and Conditions for Deliveries and Services (hereafter called "Terms") apply for the provision of all deliveries and services by Daimler TSS GmbH (hereafter called "TSS"), such as deliverables and services, services regarding application service providing (ASP agreements), software as a service (SAAS agreements) and the selling and delivery of movable goods (hereafter called "Services" in all) for its customers (hereafter called "Client"). They shall only apply if Client is a corporate body under public law or a public asset in the sense of Section 14 BGB (German Civil Code).
- 1.2 These Terms are a component part of the respective Agreement that is concluded when TSS accepts an order from Client. Conclusion of the Agreement does not require receipt of the declaration of acceptance. Any particular features of the specific Services are agreed in a quotation which also forms part of the Agreement.
- 1.3 TSS shall exclusively provide the Services as laid down in TSS's written confirmation of order (see Section 2.3) and in these Terms even if TSS unreservedly accepts orders in knowledge of Client's Terms and Conditions, provides Services or directly or indirectly refers to letters etc. that contain Client's or Third Party's Terms and Conditions. Conflicting, deviating or supplementary Terms of Client will not even be accepted through acceptance and performance of the order, but only through TSS's expressed consent in writing.
- 1.4 Acceptance without objection by Client of a Service provided by TSS is sufficient for these Terms to apply.
- 1.5 Even without special referencing, these Terms shall also apply in their valid version as a Framework Agreement (Section 305 (3) BGB) to future Agreements on Services between TSS and Client without TSS having to explicitly draw Client's attention to this in every specific case, unless deviating provisions have explicitly been agreed between the Parties. TSS shall immediately inform Client about modifications of these Terms.
- 1.6 TSS is entitled to unilaterally modify the Terms for existing Agreements. TSS shall announce such modifications to Client in writing or in an electronic form with a minimum period of 90 calendar days. Unilateral modifications of these Terms entitle Client to terminate the Services affected by the modifications with a minimum period of 30 calendar days at the time the modification of the Agreement comes into force. TSS's unilateral right of modification does not exist if

Client cannot be expected to put up with a termination of the Agreement or if Client's justified interests object to a termination (because, for instance, considerable investments were made resulting in a special interest of continuation).

SECTION 2 CONCLUSION OF THE AGREEMENT

- 2.1 All quotations of TSS are subject to change and without obligation unless a quotation is expressly designated as binding or contains a specific acceptance deadline.
- 2.2 Client's order shall be in writing and will be considered as a legally binding offer to conclude an Agreement. Unless stated otherwise in the order, TSS can accept the offer within 10 workdays of receipt (Monday to Friday, official holidays of Baden-Württemberg excluded, referred to hereinafter as "workdays").
- 2.3 TSS generally accepts an offer with a written confirmation (e.g. confirmation of order) or in exceptional cases with an electronic confirmation or by TSS's performance of the Services based on a quotation. The content of the written confirmation is material for the content of the Agreement. Legally effective declarations and statements which Client submits to TSS after concluding the Agreement (e.g. setting deadlines, reminders, notifications of defects) shall be made in writing to become effective. The written form in the sense of these Terms is also observed when the document is transmitted via telefax or e-mail.
- 2.4 Individual, also oral, contractual ancillary agreements prevail these Terms. Evidence of content shall be proven with a written Agreement or a written confirmation by TSS.
- 2.5 With the exception of guarantees expressly and contractually agreed as such, no other guarantees of any type exist.

SECTION 3 ORGANIZATION OF SERVICE PROVISION

- 3.1 TSS will provide the Services at its own responsibility. Only TSS shall be authorized to issue instructions to employed staff and subcontractors.
- 3.2 Prior to the start of the Services, TSS shall communicate a responsible project manager to Client. TSS can change the project manager at any time. TSS shall promptly inform Client about a change of the project manager.

- 3.3 For Services provided on Client's premises, TSS shall observe safety regulations and information security policies valid on the premises in as far as Client provides the safety regulations and information security policies to TSS without a specific request in due time before service provision.
- 3.4 TSS shall only be obliged to carry out a contractually agreed instruction or training if at least six registrations for the event in question were received seven calendar days before the date of the event.

SECTION 4 SERVICE PROVISION

- 4.1 TSS shall provide the Services described in detail in TSS's quotation itself or by Third Parties.
- 4.2 TSS is entitled to contract out the provision of its Services to subcontractors in full or in part. Client must grant authorized employees of TSS or its subcontractors access to the relevant premises for installation work, subject to advance notification.
- 4.3 TSS's services shall be made available between 9:00 a.m. and 5:00 p.m. on workdays unless agreement to the contrary is reached in individual cases.
- 4.4 TSS shall provide the Services according to the state of the art acknowledged at the time when the Agreement was concluded. TSS reserves the right to minor deviations from the quotation due to technical reasons even after the conclusion of the Agreement.
- 4.5 Deadlines proposed by TSS for deliveries and services shall be non-binding in the absence of an express agreement to the contrary.
- 4.6 Force majeure or other events unforeseeable at the conclusion of the Agreement or inevitable and severe events not in TSS's responsibility (e.g. operational disturbances of any kind, fire, natural disasters, thunderstorms etc.) relieve Parties from performance obligation for the duration of the disturbance and a subsequent reasonable start-up time in relation to the effect of the disturbance. Improper or late supply of TSS by an upstream supplier also represents such an event, provided that TSS was not responsible for this and had signed a congruent substitute transaction with the respective upstream supplier at the time the Agreement was concluded with Client. It also applies if TSS signs the substitute transaction immediately after the transaction with Client.
- 4.7 Parties agree to immediately communicate required information to each other in a reasonable framework and to adapt their obligations to the changed situation in good faith. TSS is entitled to terminate the Agreement if such events essentially impede TSS's service provision or make it impossible and are not of temporary duration only. If it is no longer reasonable for Client due to

the delay caused by such an event to accept the Services, Client is also entitled to rescind the Agreement through an immediate written declaration; unacceptability shall only be assumed if the expected new delivery or service provision date is later than 30 calendar days after the originally envisaged delivery or service provision date or is not foreseeable.

- 4.8 TSS is entitled to provide partial services, provided that they are reasonable for Client taking into account the type of object of service, the scope and its typical utilization by Client.
- 4.9 Only qualified staff shall be employed for the contractual performance. Client does not have a right for the Services to be provided by specific TSS staff. Client shall be informed of holidays and flexible days with a minimum announcement period of five workdays. Client shall also be informed in the case of illness of staff employed for the service provision.
- 4.10 The payment obligation comes into being on the date on which the Service is provided.

SECTION 5 COOPERATION OF CLIENT

- 5.1 Client shall provide in time and free of charge all collaborative measures that are required in the specific case for TSS's contractual service provision. Client shall especially be responsible for providing all licenses, documents, information, samples, specimen and other information and objects to be provided to TSS promptly, completely, correctly and in the proper format and to provide for the technical, constructional, personnel and organizational requirements necessary to create products or similar services (e.g. mounting, installation, commissioning, setup/configuration). TSS can assume that the submitted documents, information and data are complete and correct, unless TSS can or must be able to see that they are incomplete or incorrect.
- 5.2 After prior coordination, Client shall provide the required infrastructure, such as computers, network access, software and workplaces to TSS free of charge.
- 5.3 Client shall appoint a project manager responsible for the project implementation who shall be the contact person for TSS's project manager (Section 3.2).
- 5.4 To the extent needed in the individual case (e.g. with SaaS Agreements or ASP Agreements), Client agrees to name all users envisaged to use the Services. Client also agrees to communicate any modification in the user allocation caused by organizational or staff changes or the like to TSS, to protect the use and access rights allocated to the users as well as identification and authentication locks against third-party access and not to disclose them to unauthorized users, to make sure that all commercial protection rights and copyrights will be observed (e.g. when transferring third-party texts and data to TSS servers), to obtain required approvals of the persons in question to the extent that Client collects, processes or uses personally identifiable

information as part of the service utilization and that no statutory permission is applicable and not to abusively use Services or have them used.

- 5.5 Client avoids unauthorized third-party access to the Services provided by TSS and also obliges its staff to observe this obligation.
- 5.6 If Client is in delay of approval or if it does not comply with the contractual obligations or other obligations to cooperate or duties or if TSS's service provision is delayed by other reasons Client is responsible for, (i) possibly agreed delivery deadlines and service dates will automatically be postponed to reasonable dates (incl. a reasonable start-up period) and (ii) TSS is entitled to charge compensation for the damage caused including additional expenses caused by the delay (e.g. warehouse, stop, wait and restart costs).

SECTION 6 SERVICE MODIFICATIONS

- 6.1 Client can suggest modifications of and supplements to the Service until the time of acceptance. Client shall describe the modification suggestion in detail. TSS shall review within a reasonable period of at least 10 workdays of receipt of the modification suggestion whether Client's modification suggestion is feasible for TSS. TSS shall communicate the result of this review to Client, in the event of feasibility together with the costs and modifications of the service period resulting from the modification in the form of a written quotation. TSS shall invoice the time needed to carry out the service modification process to Client based on TSS's valid price list.
- 6.2 Client shall review the quotation within a period of 10 workdays of receipt of the quotation and communicate its decision to TSS. If Client accepts the quotation, the modifications become an integral part of the Agreement. If Client does not accept the quotation, Parties shall perform the Agreement on the grounds of the previously agreed provisions.
- 6.3 During the service modification process, service provision shall be on the grounds of the valid provisions, unless Client demands a service stop. In this case, Section 5.5 shall apply appropriately.

SECTION 7 PAYMENT AND DUE DATES

- 7.1 Unless laid down differently in the Agreement, for instance because TSS specified a flat rate in the quotation, Services will be invoiced by effort based on TSS's current price list. A modification of the price list made after the conclusion of the Agreement will be considered in the invoicing to the extent that the modification was caused by an increase in the costs for positions laid open to Client in the calculation.
- 7.2 If compensation by effort was agreed, the actually provided Services will be invoiced monthly at the beginning of the next calendar month for the previous month. Cost estimates shall not be binding. As soon as TSS realizes that the estimated effort will presumably be exceeded by more than 10% of the specified total price, Client shall receive a written notification. In this case, Client is entitled to terminate the Agreement. Already provided Services shall be compensated in accordance with Section 13.4.
- 7.3 Invoices shall be payable within 30 calendar days of invoicing. If Client culpably fails to make the agreed payment on time, it will be considered in default without a reminder being issued. In the event of a default, TSS's receivables shall be charged with 8 percentage points above the respective prime rate p.a. TSS reserves the right to further compensation claims. TSS also reserves the right to withhold Services to be provided if Client is in default after a third reminder until Client has settled the invoice. The Services shall be resumed with a reasonable restart period after the arrears have been settled.
- 7.4 Client shall cover travel and accommodation expenses and other expenses in relation to the participation in training.
- 7.5 Client shall redeem travel and accommodation expenses and other expenses to TSS upon evidence. Travel times are regarded as working hours, unless deviating provisions are agreed in the specific case. Travel expenses for the staff employed by TSS will be calculated from the place of TSS's headquarters, unless deviating provisions have been agreed.
- 7.6 All compensations shall be invoiced plus the respective valid VAT.

SECTION 8 RETENTION OF TITLE

- 8.1 Objects pertaining to the Agreement that Client buys from TSS shall remain TSS's property until the complete payment of the agreed compensation. Rights to be granted are also under the reservation of the complete payment of the owed compensation.

- 8.2 The objects under retention of title shall not be pledged to Third Parties or their property be transferred as security before the secured receivables have been paid in full. Client shall immediately inform TSS in writing if a file for an insolvency proceeding was submitted or if Third Parties seize objects (e.g. pledge) belonging to TSS.
- 8.3 In the event of Client's noncontractual behavior, especially not paying due compensation, TSS is entitled to rescind the Agreement in accordance with legal regulations and/or demand the object to be handed over on grounds of retention of title. Demanding the handing over does not contain a declaration of rescission at the same time; TSS is rather entitled to only demand the object and reserve the right of rescission. If Client does not pay the due compensation, TSS shall enforce these rights only after having set Client a reasonable payment deadline in vain or if such a deadline is superfluous in accordance with legal regulations.
- 8.4 The provisions of this No. 8 also apply to all accompanying materials. If only rights of use are granted, this applies mutatis mutandis to any data carriers that are to be handed over.

SECTION 9 RIGHTS OF USE

- 9.1 TSS reserves all proprietary rights, copyrights and property rights in all documents, materials and other objects (e.g. software, quotations, catalogs, price lists, cost estimates, plans, drawings, images, calculations, product descriptions and specifications, samples, models and other physical and/or electronic documents, information and objects) that TSS hands over to Client, unless these rights are expressly transferred to Client.
- 9.2 Subject to deviating or supplementary provisions, Client has the irrevocable and non-exclusive right to use the work results provided by TSS to the Client for the contractual purpose and within own business operation. Subsequent transfer and sublicensing to Third Parties are only permissible with TSS's prior written consent. Work results describe all objects eligible for industrial protection that TSS generates for Client on the grounds of these Terms.
- 9.3 Even to the extent that Client acquired an exclusive right of utilization in TSS's work results on the grounds of deviating agreements, TSS still has the right to use own knowledge or own knowledge of its staff and used modules, tools or procedures that are designed or appropriate for a reutilization in its own business operation or in other business relations that was used to create the work results.

- 9.4 As part of SAAS or ASP Agreements, Client receives the non-exclusive, non-sublicensable and non-transferable right restricted to the duration of this Agreement to access the SAAS or ASP Service via telecommunication channels and to use the features related to the SAAS or ASP Service via a browser in accordance with this Agreement.
- 9.5 Client will not be granted further rights, especially in the SAAS or ASP Service itself, the software application or the operating software. Client is not entitled to use the SAAS or ASP Service beyond the use allowed under the provisions in this Agreement or to have it used by Third Parties or make it accessible to Third Parties. Client is in particular not allowed to copy or sell the SAAS or ASP Service in full or in part or to lease, especially rent or lend, it for a limited time.
- 9.6 TSS shall grant Client rights of utilization for software programs which TSS provides to Client and which TSS purchased from Third Parties and for which Client is not directly granted the rights of utilization by Third Party only to the extent that TSS was granted these rights by Third Party and that it is permitted by the legal relationship with Third Party. TSS shall draw Client's attention to the existence and the terms of use of third-party software in the contractual documents. On Client's request, TSS shall immediately provide the material contractual terms of the legal relationship with Third Party.

SECTION 10 ACCEPTANCE

- 10.1 Deliverables require acceptance as laid down in this Section 10. If it is agreed for other Services than deliverables that acceptance is required, the provisions of this Section 10 and the legal regulations of the law applicable to works and services additionally apply as appropriate.
- 10.2 Client shall declare acceptance within 14 calendar days of receipt of TSS's written acceptance request, unless another deadline period was agreed. During this verification period, Client can verify that the deliverables comply with the contractual provisions.
- 10.3 Unless agreed otherwise, notified defects of TSS shall be allocated to one of the following categories:
- a) Category 1
- The deliverable shows a defect which makes its usability impossible or possible only with severe restrictions.
- b) Category 2

The deliverable shows a defect which restricts its usability without being a defect of Category 1.

c) Category 3

The deliverable shows a defect which restricts its usability only marginally.

- 10.4 If a deliverable is defective, TSS states this in writing in the acceptance report.
- 10.5 With a defect of Category 1, Client can refuse the declaration of acceptance. This also applies if several defects of Category 2 together result in effects of Category 1. TSS shall eliminate properly (Section 11.2) reported defects with effects of Category 1 in an appropriate period so that no effects of Category 1 will exist anymore. As long as the tests for such a defect, its effects or its elimination are not continued in an expert manner, the verification period for the affected deliverables will be extended appropriately.
- 10.6 Already declared partial acceptances remain unaffected by later acceptance tests for other Services. This also applies to tests already carried out unless they are affected by a defect or its elimination.
- 10.7 If defect effects of Category 1 do not exist, the Service is regarded to be ready for acceptance.
- 10.8 The deliverables are considered to be accepted – even without express declaration and without TSS's acceptance request
- if Client makes use of the deliverable for purposes other than testing or
- if Client does not object to any defects that prevent acceptance during the verification period, or
- if Client does not notify any defect within a reasonable period laid down by TSS for this purpose that impedes acceptance and TSS drew Client's attention to this consequence when setting the deadline or
- if the tests can be carried out without defects that impede acceptance.
- 10.9 Unless agreed otherwise, separable partial services can be accepted individually on the grounds of these provisions, provided that these parts can sensibly be assessed on their own.

SECTION 11 WARRANTY AND LIABILITY

- 11.1 Client shall inspect a purchased object immediately after delivery as soon as this is practical in the proper flow of business and immediately inform TSS about possible defects in writing, but no later than 14 calendar days after handover. Client shall immediately notify defects that are not recognizable in the proper flow of business in writing, but no later than 14 calendar days after the defects were detected. Otherwise the purchased object is considered accepted, unless the defect was fraudulently concealed.
- 11.2 Client shall immediately report defects that do not relate to a purchased object in a comprehensible and detailed form in writing giving all information that is useful for the defect detection and analysis. Client shall especially give the work steps that led to the occurrence of the defect, its type of appearance and the effects of the defect. Unless agreed otherwise, the respective forms and procedures provided by TSS shall be used.
- 11.3 When a defective service is provided as part of a purchase or work and service contract, Client shall at first give TSS the opportunity of rectification or subsequent delivery at its discretion. Client is entitled to rescind the Agreement, reduce payment or demand damage compensation within the agreed liability limits if supplementary performance fails after a reasonable period, is unacceptable to Client, is refused by TSS or not realized in a reasonable period laid down by Client. Rescission shall be excluded in the case of only negligible defects. Client is only entitled to chargeable self action if a defect is not eliminated even after the expiration of a reasonable time limit for supplementary performance and the cause for this is in TSS's sphere of responsibility.
- 11.4 TSS shall remove defects of Services provided by TSS on lease free of charge. TSS shall be given a reasonable time limit for this. Client's defect claims are subject to defect claims pertaining to rental agreements taking into account the restrictions laid down in 11.5, 11.6 and 11.16.
- 11.5 Client shall not enforce a reduction of compensation on the grounds of defects of Services left by TSS on a rental basis through a deduction from the agreed compensation. Corresponding claims for enrichment or damage compensation for excess compensation paid remain unaffected.
- 11.6 Client may only terminate the Agreement pursuant to Section 543 (2), S. 1 No. 1 BGB on the grounds of the refusal of contractual use for a defect which can be removed after TSS received adequate and at least two opportunities to eliminate the defect that failed. A termination for defects that only negligibly impede the suitability of the Services provided by TSS on a rental basis for the contractual use shall be excluded.

- 11.7 TSS assumes liability for the loss of Client's data and information only to the amount of the typical effort of restoration that will be required despite the Client's regular and proper data backup. Subject to a conflicting express agreement, Client has the sole responsibility for data backup.
- 11.8 TSS shall not be liable for defects resulting from changes to Client's services made by Client or third parties without the prior written consent of TSS.
- 11.9 Claims for defects will not arise for excessive or improper use, natural wear, failure of components of the system environment that are not part of the Services to be provided by TSS, non-reproducible software errors or other software errors that Client can prove in other ways or for damage caused by special external influences.
- 11.10 TSS can refuse supplementary performance until Client has paid the agreed compensation minus a share that corresponds to the economic significance of the defect.
- 11.11 If a defect was caused by defectiveness of a third-party deliverable or service, claims for defects shall first be limited to an assignment of the damage claims to which TSS is entitled from Third Party. TSS shall provide Client with the information and documents that are required to enforce the assigned claims against Third Party. If legal claiming of Third Party by Client remains unsuccessful, Client shall be entitled to direct defect claims against TSS.
- 11.12 In the event of 11.11, last sentence, the General Terms and Conditions of Third Party used in the contractual relationship with TSS shall also apply for defect claims for defectiveness of a third-party deliverable or service. TSS shall immediately provide these General Terms and Conditions to Client upon request.
- 11.13 Further claims of Client, especially for damage compensation instead of performance and for replacement of any direct or indirect damage – including accompanying or consequential damage, irrespective of the legal basis therefor – shall be excluded. This shall not apply insofar as
- a) TSS is liable on grounds of imperative legal regulations, such as the Product Liability Act,

TSS fraudulently concealed a defect or issued a guarantee,

the damage was caused by intent or gross negligence of TSS, its legal representatives or auxiliary persons or a negligent violation of material contractual obligation by these persons (referring to obligations whose compliance makes the proper performance of the Agreement possible in the first place and in whose compliance Client has good reason to regularly trust) or

a culpable violation of obligation by TSS, its legal representatives or auxiliary persons caused physical injury or health damage.

11.14 If TSS breaches material contractual obligations pursuant to No. 11.13 c), its liability shall be limited to the foreseeable damages that are typical for the contract.

11.15 The afore mentioned provisions apply accordingly for Client's direct claims against TSS's legal representatives or auxiliary persons.

11.16 TSS's culpability-based liability pursuant to Sec. 536a (1) BGB due to defects that were already present upon the conclusion of the contract shall be excluded.

11.17 If the contractual use of a SAAS or ASP service is impeded through third-party copyrights without TSS's fault, TSS is entitled to refuse the Services affected by this. TSS shall immediately inform Client thereof and provide access to its data in an appropriate way. Client is not obliged to pay in this event.

11.18 For violation of third-party rights by TSS's Services, TSS shall only be liable under the conditions mentioned in this Section 11 in as far as the Services are contractually used in the operational environment contractually envisaged.

11.19 If Third Party claims against Client that a Service provided by TSS violates its rights, Client shall immediately inform TSS thereof. TSS and possibly its upstream suppliers are entitled, but not obliged, to fend off the enforced claims at their own expense to the extent that it is permissible. Client is not entitled to accept third-party claims before having given TSS appropriate opportunity to fend off third-party rights in any other manner.

11.20 If a Service provided by TSS violates third-party rights, TSS shall at its own discretion and own expense

- a) provide Client with the right to use the Service or
- b) design the Service not to violate rights or
- c) withdraw the Service and reimburse the compensation paid by Client minus a reasonable compensation for use if TSS cannot implement other corrective action with a reasonable effort.

Client's interests shall reasonably be taken account of.

11.21 The limitation term for defect claims is one year from legal limitation commencement. The legal terms for recourse in accordance with Section 479 BGB remain unaffected. Terms shall also remain unaffected in as far as the law stipulates longer terms in accordance with Section 438 (1) No. 2 or Section 634a (1) No. 2 BGB, in the event of TSS's willful or grossly negligent violation of obligation, fraudulent concealment of a defect or in the event of injury to life, body or health as well as for claim on the grounds of the Product Liability Act. TSS's handling of a notified defect inhibits limitation only to the extent that legal requirements exist for this. It does not lead to a new commencement of the limitation term. Supplementary performance can exclusively affect the limitation of the defect that caused supplementary performance.

11.22 TSS can demand a compensation of its effort in as far as

- a) TSS becomes active on the grounds of a notification from Client without the existence of a defect, unless Client could not recognize with reasonable effort that a defect did not exist or

a reported disturbance is not reproducible or Client cannot prove it to be a defect in any other way or

extra effort is caused due to Client's improper performance of obligations.

SECTION 12 RIGHTS OF RETENTION, BANS ON SETTING OFF AND ASSIGNMENT

12.1 Client is entitled to offset and enforce a right of retention only in as far as its counterclaim drawn upon for this

- (a) has been confirmed by a non-appealable court decision,
- (b) is uncontested, or
- (c) is ready for decision at the time of the final trial in the event of performance in court or
- (d) has been allowed by TSS.

12.2 Client is only entitled to assign its rights under the respective Agreement with TSS's prior written consent, unless the rights relate to monetary claims in accordance with Section 354a HGB (German Commercial Code).

SECTION 13 TERMINATION

- 13.1 If the Agreement is a continuing obligation and if it was concluded sine die, Parties can terminate it at the end of a calendar year with a termination period of three months. A possibly agreed minimum term remains unaffected from this provision.
- 13.2 Client can cancel training dates pertaining to this Agreement up to seven calendar days before the date without incurring costs. With later cancellation or non-appearance, the full training compensation will be charged. TSS must offset saved expenses.
- 13.3 A termination shall be made in writing to become effective. Every termination shall be made by registered mail.
- 13.4 If Client prematurely terminates an Agreement in full or in part, it shall compensate the Services provided until the termination time. Section 649 (2) BGB remains unaffected.
- 13.5 The right to terminate without notice for cause remains unaffected. For TSS, cause exists in particular if Client is in arrears with payment of the compensation, or a substantial part thereof, on two consecutive dates. This does not affect the right of the terminating Party to enforce damage claims.

SECTION 14 PLACE OF FULFILLMENT

Unless agreed otherwise, the place of fulfillment is the place of TSS's headquarters.

SECTION 15 NON-DISCLOSURE

- 15.1 Parties treat all confidential information and documents that they receive from or via the other Party as part of the cooperation as strictly confidential. "Information" includes the data and the storage media carrying the data. Confidential information includes all information that:
- a) one Party expressly marked as confidential;
 - b) represents know-how and trade secrets;
 - c) is protected by commercial or other protection rights or

d) for which a non-disclosure interest of the disclosing Party is inherent in the nature of the information.

- 15.2 Parties shall ensure that attention and abuse of contractual information and documents by Third Parties is excluded. This obligation to maintain secrecy shall be valid during the term of the Agreement and a period of 5 years after its termination.
- 15.3 Confidential information and documents shall only be used for the purpose of the performance of the Agreement as long as and in so far as Parties have not agreed other provisions in writing. Reproduction of the confidential information via any procedure whatsoever, and transfer to other computers or storage media, is permitted only to the extent necessary to fulfill the purpose of the Agreement. It shall only be disclosed to employees and subcontractors who need to know it for the performance of the Agreement and who agreed to the obligations of confidentiality pertaining to these Terms. In so far as is permitted by employment law, Parties will ensure that the obligation of confidentiality also covers any employees who leave office of either Party during the term of this Confidentiality Agreement.
- 15.4 Client shall not make received quotations or contractual texts in full or in part, not even in an edited version, accessible to a Third Party without TSS's prior written consent.
- 15.5 The obligation to secrecy does not apply in as far as:
- a) one Party is obliged to disclose information by virtue of law or a court order or official directive;
- information and documents are or become public knowledge without being caused by a contractual violation of one Party;
- the receiving Party received the information and documents from Third Parties that are entitled to disclose them to the public or
- the information and documents have been developed by the recipient as part of its own independent work before they were transmitted.
- 15.6 Party pleading exception from the obligation to secrecy has the burden of proof.
- 15.7 Client shall also impose these obligations to possibly engaged Third Parties.
- 15.8 Parties undertake to return to the other Party after the end of the Agreement all confidential information, storage media and copies received, unless they are prevented from doing so by legal obligations, in particular statutory record retention requirements. If the confidential information

consists of data or documents, the other Party can insist on their irretrievable deletion or destruction instead of their return. The deletion or destruction must be confirmed in writing by the Party who has carried it out.

SECTION 16 DATA PROTECTION

16.1 Client will only collect, process and use personally identifiable information relating to TSS, its employees and subcontractors it receives knowledge of during the performance of the Agreement pursuant to valid data protection laws.

16.2 In relation to the use of storage space, Client:

- a) shall not illegally or abusively use the storage space or have it used in such a way, in particular not
- calumniously or in a way that insults the honor of other natural or corporate bodies;
 - under violation of protected rights, such as copyrights and ancillary copyrights, trademark or other labeling rights, patent rights, business secrets or confidentiality agreements;
 - to do harm to persons or objects or harass persons in any other way;
 - to violate the rights of other persons for the protection of privacy or their general personal rights;
 - to upload pornographic, obscene or derogatory material;
 - to ask for illegal action or promote such action or
 - to do this in a way that can lead to consequences of criminal or civil law pursuant to valid law.

shall indemnify TSS from any third-party claim including incurred costs in the event of a violation of these obligations upon initial request. If Client recognizes or must be able to recognize imminent violation of these obligations, it undertakes to immediately inform TSS thereof.

shall obtain required approvals of the respective persons in question to the extent that Client collects, processes or uses personally identifiable information as part of storage space utilization and that no statutory permission is applicable.

- 16.3 If TSS is granted access to personal data relating to Client or its customers, for example in connection with web server functions or cloud hosting services, or is expected to process such data as a contractor, Client shall be required to notify TSS of this fact in advance in writing. In this event, Client and TSS undertake to agree on contract processing in accordance with the provisions of data protection law.

SECTION 17 CONCLUDING PROVISIONS

- 17.1 The law of the Federal Republic of Germany applies, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG) dated April 11, 1980.
- 17.2 With respect to the interpretation of the Agreement, the German version of these Terms and other contractual documents shall prevail.
- 17.3 The sole place of jurisdiction for all disputes arising from or in connection with this Agreement is Ulm. This is without prejudice to legally mandated judicial venues. TSS is entitled to also file an action at Client's headquarters or branch.
- 17.4 Should individual provisions of these Terms be or become ineffective or unenforceable, they shall not affect the validity of the other provisions. Parties undertake to replace the invalid or unenforceable provisions with valid provisions that most closely reflect the meaning and economic purpose as well as the intention of the Parties. The same also applies in the event of omissions in the Agreement.
- 17.5 In case of conflicts, the documents shall prevail in this order
- (a) TSS's quotation or confirmation of order,
 - (b) TSS's service description and (c) these Terms.
- 17.6 Modifications or amendments to these Terms or other component parts of the Agreement in question must be in writing. Modifications or amendments that do not fulfill this requirement are void. This also applies to modifications to this written form clause.