

## **tesa Terms and Conditions of Purchase for Services in the Field of Information Technology (IT)**

As of: July 2022

### **1. General**

- 1.1 Our orders are subject to the following conditions to the exclusion of all conditions of the Contractor. The Contractor acknowledges these Terms and Conditions of Purchase as binding for the present contract, at the latest upon commencement of the execution of the contract.
- 1.2 Any terms and conditions of the Contractor, even if they do not contradict these Terms and Conditions, shall not apply. Any other agreements deviating from these Terms and Conditions shall also only apply if we expressly confirm them in writing.
- 1.3 We may revoke the order without incurring any costs if we have not received the confirmed duplicate of the order within two weeks after receipt of the order by the Contractor.

### **2. Contractual Services**

- 2.1 The specific contractual services shall be specified separately by the parties in the contract and the documents relevant to the contract.
- 2.2 The Contractor shall provide the contractual services properly and free of legal and material defects within the scope of its contractual and statutory obligations. The Contractor shall take into account requirements from EU directives that have not yet been transposed into national law.
- 2.3 When providing the contractual services, the Contractor shall comply with the current state of the art with regard to data and system security. This includes in particular the use of recognized methods, process models and comparable sets of rules (e.g. ITIL, relevant ISO standards). In particular, the Contractor shall protect all information of tesa against unauthorized access by third parties in accordance with the current state of the art. Before providing software and data carriers, the Contractor shall check them in accordance with the current state of the art to ensure that they do not contain any malware, computer viruses or similar.
- 2.4 If the Contractor provides IT services (e.g. consulting services, training services), it shall provide the services in accordance with the current state of the art in data processing with the diligence of a prudent businessman operating in the IT services industry and the following provisions shall apply in addition:
  - 2.4.1 The Contractor shall use only carefully selected, qualified and trained employees and vicarious agents.
  - 2.4.2 The Contractor shall perform the contractual services in accordance with tesa's technical and organizational specifications under the supervision and sole authority to issue instructions of the project manager/contact person named by it as an independent and autonomous service. He shall instruct his employees to follow instructions only from the project manager/contact person named by him.
  - 2.4.3 The Contractor's project manager/contact person shall plan, coordinate and monitor the contractual services of the Contractor's employees and request any necessary information from tesa in good time. He shall be available during normal business hours to answer tesa's inquiries. Without tesa's consent, the Contractor shall only change the project manager/contact person for good cause (e.g. parental leave, illness, termination of employment) and shall notify tesa of the intended change without delay.
  - 2.4.4 If an employee or vicarious agent deployed to fulfill the contract seriously or repeatedly violates contractual obligations, tesa may demand that he is replaced by an employee with appropriate qualifications.
  - 2.4.5 tesa shall acquire the exclusive, irrevocable, transferable, sublicensable right of use (including the right to edit), unlimited in terms of content, space and time, to all work results that the Contractor achieves in the course of providing the contractual services at the time of their creation. The Contractor shall transfer to tesa free of charge any employee inventions arising in the course of the performance of the contractual services.

- 2.5 If the Contractor provides IT-work services (Werkleistungen) (e.g. implementation of standard software, software development and software adaptation services), the provisions of Section 2.4 shall apply accordingly and the following rules shall apply in addition:
- 2.5.1 The Contractor shall grant tesa an exclusive, unlimited, transferable, sub-licensable and irrevocable right of use to non-transferable rights, in particular to copyrights, at the time of their creation to the services specially created for and made available to tesa, which right shall be free of charge and free of third-party rights and shall include all types of use known and unknown at the time of the conclusion of the contract. This includes in particular the right of unrestricted reproduction for publication, distribution in unlimited numbers, exhibition, performance, presentation, making available to the public as well as the right to pass on and the right to edit, redesign or otherwise modify. This right of use refers to the work results in all development, intermediate and final stages as well as to other documents required for the exercise of the rights of use, such as analyses, concepts and descriptions. In the case of software, this right of use also applies to the source code and the accompanying documentation as well as all other documents provided to tesa.
  - 2.5.2 If the proper use of the Software requires the use of further embedded intellectual property, in particular copyrights, already existing with the Contractor prior to the conclusion of the contract, the Contractor grants tesa a non-exclusive, royalty-free, irrevocable, sub-licensable, perpetual license to use such embedded intellectual property of the Contractor in order to enable tesa to use the Services for its business purposes (including the group companies of tesa within the meaning of Section 15 AktG). tesa may not transfer or sell this intellectual property of the Contractor in its independent form and separately from the Services to third parties.
  - 2.5.3 In the event of the provision of software creation services and software adaptation services (customizing), the Contractor shall be obligated to transfer the software in object and source code (in the case of customizing, the respective part of the source code) including user and programming documentation describing the same. The Contractor must create the source code and the corresponding documentation in tesa's development environment (e.g. Microsoft Azure Dev Ops by tesa). The documentation must be prepared in such a way that a competent third party is able to correct errors and to edit and further develop the software after a reasonable training period, and must not be limited to inline documentation, but must at least include a coherent overview in text form. The Contractor shall provide tesa with the development tools required for the processing of individual software free of charge.
  - 2.5.4 The Contractor shall not assert the copyright designation right pursuant to Section 13 sentence 2 UrhG (German Copyright Act) for works that enjoy copyright protection (in particular software, documentation and instructions) that it creates for tesa on the basis of an order and shall take appropriate measures to ensure that persons consulted by it in the course of creation also do not assert this copyright designation right.
  - 2.5.5 To the extent that work results arise in the course of the creation or adaptation services that may be protected by industrial property rights, the Contractor shall be obligated to notify tesa thereof without undue delay. tesa shall be free to register such industrial property rights in its name or in the name of its group companies. The Contractor shall provide tesa with comprehensive support in this regard, in particular provide tesa with all necessary information and make all necessary declarations and take all necessary measures.
  - 2.5.6 Subject to a more detailed agreement in the order, the Contractor shall be obliged to properly instruct a sufficient number of tesa employees in the use of the Software. The parties shall jointly determine the time, place, type and scope of the instruction.
- 2.6 The Contractor undertakes to prepare traceable documentation in a language to be determined in advance by tesa for all work results, regardless of whether they are works or services.
- 2.7 The resources provided by tesa may only be used by the Contractor, its employees and vicarious agents to perform the contractual services and must be returned immediately afterwards.

- 2.8 Unless otherwise agreed, the Contractor shall be obligated at its own expense to provide all preparatory services required for the performance of the contractual services (such as planning, construction, configuration and installation of software).
- 2.9 Services and rights of use not expressly mentioned in the order shall nevertheless be subject matter of the order if and to the extent they are necessary for the contractual provision of the IT Services, their functional capability and/or for achieving the purpose of the contract. The Contractor may not demand any additional remuneration for this.
- 2.10 If the Contractor offers support services not commissioned by tesa or comparable additional services, it shall offer these to tesa at standard market conditions.
- 2.11 The Contractor shall immediately notify tesa in text form (e-mail to the tesa project manager) if it considers any information provided by tesa to be incomplete or incorrect or if it believes that circumstances exist that prevent the Contractor from fulfilling its performance obligations in accordance with the contract; in this case, the Contractor shall, if possible, propose suitable measures to remedy or improve the situation.
- 2.12 By providing suitable data (e.g. order number, contact person), the Contractor shall ensure that tesa can clearly assign each contractual service.
- 2.13 The Contractor undertakes to comply with the provisions of the tesa Code of Conduct for Suppliers (available at <https://www.tesa.com/de-de/files/download/46018,32,code-of-conduct-suppliers.pdf>). If the Contractor violates the provisions of the tesa Code of Conduct for Suppliers, the violations shall be reported to tesa without undue delay. tesa reserves the right to terminate the contractual relationship in the event of compliance violations by the Contractor or to take other appropriate measures to encourage its Contractor to comply with the provisions of the tesa Code of Conduct for Suppliers.
- 2.14 We refer to our Environmental and Energy Guidelines (available at: <https://www.tesa.com/en/about-tesa/sustainability/sustainability-report>).
- 2.15 The Contractor shall fully comply with the applicable labor law regulations, in particular the Minimum Wage Act, and shall ensure that the occupational health and safety regulations, in particular with regard to statutory working hours, are observed.

### **3. Delivery Time**

- 3.1 Agreed delivery and execution deadlines are binding.
- 3.2 If the Contractor recognizes that delivery and execution deadlines cannot be met, it shall be obliged to inform tesa thereof without delay. Any change in delivery and performance deadlines must be agreed in writing with tesa.
- 3.3 If the Contractor culpably causes agreed delivery or execution deadlines to be exceeded, tesa may demand a contractual penalty of 0.2% of the net order value per working day, without prejudice to statutory claims. If the contractor claims that he is not responsible for the delay, he must prove this. The contractual penalty shall be limited to 5% of the net order value, irrespective of the duration of the delay. Any contractual penalty paid shall be offset against claims for damages arising from delay.

### **4. Change Request**

- 4.1 tesa may request changes to the services to be provided under the order ("Change Request") at any time until acceptance, provided that such changes are technically possible and reasonable for the Contractor. Immediately upon receipt of tesa's Change Request, the Contractor shall prepare a revised offer free of charge, which must contain information on the possible cost changes, schedule postponements and the effects of the changes on the function and quality of the Work.
- 4.2 tesa shall review the offer. If tesa accepts the offer and the parties have reached a written agreement on all cost changes, schedule changes or effects of the changes on function and quality, the changes and additions shall become part of the contract and the Contractor shall adapt all work results, including the documentation, to the changes. If tesa rejects the offer, the original order shall continue to apply.
- 4.3 During an ongoing change request process, the Contractor shall continue to provide its IT services in accordance with the order as scheduled, unless tesa instructs it in text form to discontinue the provision of services in whole or in part until a decision has been made on the change in services. The Contractor shall immediately inform tesa in text form if it assumes or must assume that IT services or other work to be performed by it during the continuation are later no longer reasonably usable in the event of a successfully agreed

change request. If such timely notification is not made, the resulting useless expenses and costs shall be borne by the Contractor.

## 5. Acceptance

5.1 If acceptance is required under the contract for work and services (Werkvertrag), tesa shall accept the services if they essentially comply with the contractually agreed specifications. The risk of accidental loss or accidental deterioration shall pass to tesa at the time of acceptance, Section 644 BGB (German Civil Code). tesa may not refuse acceptance if there are only insignificant defects within the meaning of the following provisions. Acceptance must always take place by means of a formal acceptance procedure (a fictitious acceptance is excluded). Acceptance of a defined milestone (partial acceptance) shall be subject to final acceptance of the work. Acceptance of partial performances shall not restrict tesa from asserting claims for subsequent defects in partial performances that have already been accepted, insofar as these only come to light as a result of the interaction of the partial performances during the overall acceptance. Unless the Parties agree on acceptance criteria, procedures and other details of acceptance during the Project, the following provisions of this Clause 5 shall apply.

### 5.2 Dealing with defects during the acceptance test

#### 5.2.1 Defect Classes

Defect category 1 (major defect)

The defect means that the service as a whole or significant parts of it cannot be used.

Defect category 2 (significant defect)

The defect results in significant restrictions in the use of important functions that cannot be remedied by suitable measures within a period of time acceptable to tesa.

Defect class category 3 (insignificant defect)

Other defects.

5.2.2 Defects of Category 1 prevent acceptance.

5.2.3 If category 2 defects are identified during acceptance, tesa may declare a conditional acceptance in the sense of a condition precedent (aufschiebende Bedingung), provided that the sum of these defects does not prevent operation. The parties shall then jointly set a date in writing by which the Contractor must remedy the category 2 defects. By this date, the parties shall verify whether the defects have been remedied. If the parties agree that the defects have been remedied, the condition precedent shall be deemed to have been fulfilled. Five (5) category 2 defects are generally considered to be preventing operations.

5.2.4 tesa shall not refuse acceptance in case of category 3 defects. Five (5) category 3 defects shall be counted as one (1) category 2 defect. Category 3 defects must be rectified immediately.

5.2.5 The assignment of the individual defects to a defect class shall be made by mutual agreement. If an amicable solution cannot be reached, tesa shall assign the defects at its reasonable discretion, taking into account the Contractor's legitimate interests.

5.3 If defects are found which affect the Work or a part thereof more than slightly, the acceptance must be repeated at the Contractor's expense. The Contractor shall set a date for the acceptance which, taking into account all circumstances, must take place as soon as possible after the failed acceptance.

5.4 Approvals, tests or trials do not constitute acceptance within the meaning of Section 640 BGB. They serve exclusively to check the progress of the contractual services and the early detection and elimination of defects that prevent acceptance. tesa may also refuse acceptance if approvals have been granted or tests or trials have been successfully completed, but other services have not been provided without defects (e.g. handover of documentation).

### 5.5 Acceptance procedure

5.5.1 The readiness for acceptance is defined in the project milestone planning within the scope of the order. The Contractor shall notify tesa in writing of the readiness for acceptance with a reasonable period in advance ("readiness notification"). The parties shall then jointly agree on a date for the acceptance. For this purpose, tesa shall be entitled to submit a proposed date, which may only be rejected by the Contractor for good cause. The acceptance shall take place in the presence of both parties, unless otherwise agreed. tesa shall be entitled to involve its consultants and experts

- in the acceptance. tesa shall be entitled to participate in a test at any time, even if this has not been expressly stipulated in test concepts or otherwise.
- 5.5.2 If the contractual services consist of the creation of individual software, tesa or, at tesa's request, the Contractor itself shall conduct an acceptance test lasting at least ten working days under simulated and/or real conditions of use, unless we waive the performance of such an acceptance test in writing. We are entitled to check the fulfillment of the contractual requirements by using code scanning tools or to have them checked by the Contractor. tesa shall record any defects occurring during the acceptance test. If there are no defects or only insignificant defects, tesa shall declare acceptance (i) in the case of acceptance without an acceptance test within 10 working days of acceptance of the contractual services and (ii) in the case of acceptance with an acceptance test within 14 working days of completion of the acceptance test, unless the parties have agreed on a longer period.
- 5.5.3 If the contractual services consist of the creation of individual software and the Contractor performs these using agile software development methods (e.g. Scrum), the contractual services shall always require overall acceptance (final acceptance). Approvals of a specific service section (e.g. sprint) do not signify acceptance or partial acceptance. Within the framework of the acceptance test, in which in particular the functions that can only be tested through the overall integration of the contractual services and the performance of the overall system are tested, the Contractor shall be obliged to prove that its overall performance meets all the requirements defined in the Product Backlog and - if agreed - described in the Definition of Done under conditions comparable with productive operation. Acceptance tests do not constitute productive use.
- 5.5.4 If one of the parties is prevented for a compelling reason, completion shall be postponed for a reasonable period of time until the reason for its prevention has been eliminated. Each party shall bear the costs of such postponement itself.
- 5.5.5 If a party fails to appear without good cause, it shall reimburse the other party for the costs it incurs as a result of the failure to appear.
- 5.5.6 tesa shall record the acceptance procedure and record the result as well as the type and extent of any defects. Immediately after the acceptance, tesa shall submit the protocol to the Contractor for review. Objections by the Contractor shall be raised immediately, otherwise the acceptance protocol shall be deemed approved. If the parties cannot agree on objections, the escalation procedure described in clause 13 shall apply. The protocol must be signed by the Contractor and by tesa. The acceptance protocol must also contain the deadline by which the defects are expected to be remedied.
- 5.5.7 The overall acceptance shall take place in accordance with the respective regulations of the order (e.g. last sprint is executed and accepted). The warranty period shall commence upon completion of the overall acceptance.
- 5.5.8 The approved acceptance report is a prerequisite for payment by tesa.
- 5.5.9 Acceptance or implied acceptance by commencement of use or payment is expressly excluded.
- 5.5.10 tesa shall be entitled to exercise further rights under the contractual agreements, in particular to withdraw from the individual order and to claim damages, after the third attempt to remedy a defect occurring during acceptance has failed.

## **6. Payment**

- 6.1 The remuneration shall be due for payment within the payment period stated on the order after receipt by tesa of an invoice containing all mandatory information pursuant to Section 14 (4) UStG (German Value Added Tax Act).. However, payment shall only be due when the contractual services have been rendered in full and accepted by tesa or handed over in full to tesa.
- 6.2 Invoices with incorrect or missing information will generally not be accepted and will be returned to the issuer for correction or completion. Offsetting is equivalent to payment. Claims arising from contracts concluded with tesa may only be assigned with our written consent. The Contractor shall have no right of set-off or retention unless the counterclaim is undisputed or has been legally established or is not based on the same contractual relationship.



- 6.3 If remuneration on the basis of time spent is agreed, the Contractor must provide evidence of the services it has performed by means of entry documents containing specific details of the content and expenditure of the activity, which must be countersigned by tesa in advance of invoicing.
- 6.4 The remuneration agreed upon for the creation of Individual Software by means of agile software development methods shall be deemed to be the binding upper remuneration limit.
- 6.5 Travel expenses will only be reimbursed if this has been agreed and tesa has given its prior written consent (by e-mail is sufficient) to the business trip in question and the costs incurred. tesa's travel policy applies to travel expenses.

## **7. Claims for defects**

- 7.1 The Contractor warrants that the contractual services have the contractually agreed quality. If the quality is not agreed in detail, the Contractor warrants that they are suitable for the use assumed under the contract or, if no specific use is assumed, for ordinary use and that they have a quality that is customary for services of the same type and can be expected from tesa.
- 7.2 In the event of defects, the statutory provisions shall apply.

## **8. Third Party Rights**

- 8.1 The Contractor warrants that the Contractual Services and their use do not infringe any intellectual property rights or other rights of third parties existing in Australia, Brazil, Canada, China, Hong Kong, India, Japan, Malaysia, Mexico, New Zealand, Norway, Russia, Singapore, South Korea, Switzerland, Taiwan, Turkey, the United Kingdom, Vietnam, the United States or in a member state of the EU, and shall indemnify and hold tesa harmless without limitation from and against all resulting claims of third parties and related costs for infringement of third party rights. This shall not apply if and to the extent that tesa is responsible for the infringement of third party rights.
- 8.2 If contractual services violate the rights of third parties (including industrial property rights and copyrights), the Contractor shall do everything reasonable to establish contractual conditions by acquiring rights. If the acquisition of rights is not successful, the Contractor shall provide tesa with equivalent contractual services and work results that do not infringe the rights of third parties (workaround). The workaround shall only be equivalent if it does not or only insignificantly restrict the agreed usability of the contractual services and embodied deliverables by tesa. The Contractor shall bear the costs of the workaround as well as any necessary adaptation of the environment of the Contractual Services, unless it is not responsible for the infringement of the rights of third parties.
- 8.3 In the event that claims are asserted against tesa due to the infringement of third party rights by the contractual services, the Contractor shall be obliged to independently conduct the legal defense for tesa at its own expense. tesa shall support the Contractor in the defense against asserted third party claims to the extent required, to a reasonable extent at the Contractor's expense. tesa shall be entitled to conduct the legal defense itself, but shall coordinate this with the Contractor. In this case, the Contractor shall also be obliged to bear the necessary costs.
- 8.4 The Contractor shall indemnify tesa against all claims asserted against tesa by authors involved in the creation of the Work Results.

## **9. Use of Third-party/Open Source components**

- 9.1 The Contractor shall only be permitted to integrate third-party and open-source software components into the Work in text or written form with the express consent of tesa.
- 9.2 The Contractor shall assume as a material contractual obligation,
  - (i) to inform tesa in writing prior to the conclusion of the contract which Open Source Software components are to be used, which license conditions apply and to provide tesa with a copy of the license conditions,
  - (ii) to ensure that the use of the Open Source Software does not restrict tesa's use of the Work in accordance with the contract or its intended use,
  - (iii) ensure that none of the Open Source Software licenses used is incompatible or in conflict with any other software license used; and

- (iv) ensure that no software is used which is subject to a copyleft license and which triggers a so-called copyleft effect by which the license terms of the respective open source software extend to software other than the respective open source software. The use of such a copyleft license is only permissible if the Contractor explains in a comprehensible manner why no copyleft effect is triggered during the contractual or intended use and transfer/accessibility of the software required for this purpose and if tesa expressly agrees in writing to the use of the specifically named components after receipt of this explanation.
- 9.3 The Contractor shall be obliged to indemnify tesa against all claims of third parties due to a violation of the provisions of this clause 9 for which it is responsible and the associated costs.

#### **10. Antitrust damages**

The contractual partner is obligated not to behave in any way contrary to antitrust law to the detriment of tesa. If it is determined by the antitrust authorities that the contracting party participated in an unlawful restriction of competition during the term of the contract and that the services provided to tesa were affected by this, the contracting party is obligated to pay tesa liquidated damages in the amount of 10 % of the order value (plus interest at the statutory rate) for the period affected by the cartel. The contracting party shall have the right to prove that tesa suffered a lesser damage. The contracting party shall provide tesa with the information and documents necessary to verify the existence and scope of such claims without undue delay after the infringement has become known. The obligation to pay damages shall also apply if the business relationship has already ended at the time the antitrust violation is discovered.

#### **11. Ownership; Retention of Title**

- 11.1 The Contractor shall grant tesa ownership of all work results, free of third-party rights, upon their creation and in their respective processing state. Any retention of title by the Contractor is excluded unless it is covered by our express written consent.
- 11.2 tesa reserves all property rights and copyrights to all documents and information made available to the Contractor by tesa; they may not be made available to third parties without the written consent of tesa and must be returned to tesa immediately after the contractual services have been rendered, and records and copies made from them must be deleted or destroyed. Rights of retention to these documents and information are excluded.

#### **12. Statute of Limitation**

- 12.1 The limitation period for claims for defects (warranty period) shall be two (2) years for material defects and three (3) years for defects of title; should the statutory limitation period for claims for defects be longer, the longer limitation period shall apply instead. In the case of contractual services requiring acceptance, the limitation period shall commence upon acceptance; in the case of contractual services requiring handover, the limitation period shall commence upon confirmation of handover by tesa, otherwise in accordance with the statutory provisions. This shall also apply to software (parts) provided to tesa within the scope of software maintenance.
- 12.2 The statutory limitation periods shall apply to liability and other claims.

#### **13. Escalation Procedure**

- 13.1 Each party shall appoint a person to act as the central contact person for the other party during the term of the Individual Order ("Project Manager"). The Project Manager shall prepare the decisions to be made and shall ensure that decisions falling within the responsibility of the party he represents are made within a reasonable time frame. The parties shall ensure that a replacement Project Manager is appointed if their respective Project Manager is on leave for a week or more and shall notify the other party of the name of the replacement Project Manager by email at least two (2) weeks in advance.
- 13.2 In order to coordinate and control the execution of the Contractual Services and to identify, avoid and resolve conflicts at an early stage, the parties shall establish three different bodies.
- Level 1: Project Manager;
  - Level 2: Project Committee;
  - Level 3: Steering Committee (including Contractor representative).

- 13.3 The parties will always discuss disagreements between their project leaders first and try to find an amicable solution. If no agreement can be reached between the Project Managers, the tesa Project Manager shall summarize the conflict in a detailed document and escalate it to the Project Committee within five (5) working days. If the tesa Project Manager does not fulfill this obligation, any other representative of a party may escalate the conflict to the Project Committee.
- 13.4 The Project Committee will discuss the conflict within five (5) working days and attempt to find a mutually agreeable solution. If the Project Committee does not succeed in finding a solution within another five (5) working days, the Project Committee shall escalate the conflict to the Steering Committee.
- 13.5 If the Steering Committee is unable to reach a mutually agreeable solution within five (5) working days, either party may declare after a further five (5) working days that dispute resolution under the project has failed.
- 13.6 Both parties shall be obliged to continue the performance of their services during the settlement of a conflict. In the event of a dispute, tesa shall be entitled to commission the Contractor with the provision of Services even if the Contractor is of the opinion that it does not owe the respective Service or does not owe it in the form required by tesa, unless the Contractor proves that it is impossible for it to provide the Service; this shall also remain reserved for tesa in the context of any legal dispute. If it turns out in the course of the dispute resolution that the Contractor would not have been obliged to perform the respective service, the additional costs of the service shall be reimbursed by tesa.

#### **14. Termination, Migration Support**

- 14.1 Any termination must be in writing.
- 14.2 In the event of termination of the contractual relationship, irrespective of the reason, the parties shall cooperate for the proper execution of the contract. Unless otherwise included in the contractual services, the Contractor shall be obligated to provide any services required in this context within the scope of its technical, organizational and personnel capabilities in return for reasonable compensation.
- 14.3 If the Contractor has provided contractual services for a continuous period of at least six months, this shall in particular also include such services as are necessary to facilitate the transition to another technical solution or to another provider with uninterrupted availability of the affected services and/or system (migration support). This shall not apply if the provision of migration support services is unreasonable for the Contractor due to the particular circumstances of the termination of the contract.
- 14.4 Upon tesa's request, the Contractor shall continue to provide the contractual services affected by the termination at the previous conditions within the scope of the migration support. The Contractor may demand an appropriate adjustment of the remuneration from tesa if it can be proven that this results in increased expenses for the provision of the services.
- 14.5 Upon tesa's request and against payment by tesa of a separate remuneration customary in the market, the Contractor shall offer further migration services as part of the migration support, in particular prepare a migration concept with the detailed planning of the individual migration steps or support tesa in the preparation thereof and offer tesa software and hardware belonging to the infrastructure as well as other objects and rights required for the operation of the Services.

#### **15. Place of Performance**

Place of performance for delivery is the place of transfer of risk; place of performance for payment is Hamburg. If the Contractor makes software available to tesa for download, the Contractor's obligation to perform shall only be fulfilled as soon as the software is available on tesa's systems.

#### **16. Use of Subcontractors**

- 16.1 The Contractor shall be commissioned by tesa on the basis of its personal competence and expertise. Therefore, the Contractor shall only be entitled to assign contractual services in whole or in part to qualified, experienced and competent subcontractors with the



prior written consent of tesa; however, the Contractor shall not be released from its contractual obligations and duties by the use of subcontractors; furthermore, the Contractor shall remain fully liable to tesa for the actions of the subcontractors used. The Contractor shall remain the sole contact person for tesa and shall be responsible for the fulfillment of all contractual obligations, also with regard to any claims for defects during the warranty period.

- 16.2 Employees of the Contractor and of subcontractors shall observe the house rules and safety regulations applicable to tesa (tesa's "Safety Rules for Contractors", available at: <https://www.tesa.com/de-de/ueber-uns/zertifizierungen-sicherheitshinweise>). The Contractor shall be obliged to train its employees regularly and to check compliance with the relevant regulations. In this context, the Contractor shall document in detail its measures to avert violations of the applicable regulations.
- 16.3 The Contractor shall draft the subcontracting agreements in such a way that the regulations on cost and deadline security, on complaints due to faulty planning, on confidentiality, on data protection and on the insurance obligation correspond to the regulations agreed between tesa and the Contractor. The Contractor shall also include a provision in subcontract agreements that any further commissioning of subcontractors is only permissible with the prior written consent of tesa.
- 16.4 The Contractor shall monitor and coordinate the subcontractors. Communication between subcontractors and tesa may only take place via the Contractor. However, the Contractor shall ensure that the subcontractor is available at all times for queries from tesa and for meetings with tesa or other project participants.

## 17. Confidentiality, Data Protection

- 17.1 The Contractor is obliged to treat business or trade secrets and other business or operational information concerning tesa's activities as confidential for an unlimited period of time. Furthermore, the Contractor undertakes not to disclose the existence or the content of the contractual relationship with tesa. The Contractor shall not disclose any documents or information received directly or indirectly in connection with the contractual services to third parties and shall use them exclusively for the performance of the contractual services. He shall oblige subcontractors accordingly. This obligation shall remain in force even after termination of the contract. The Contractor is aware of the special provisions on the criminal liability for the violation of trade secrets (Section 23 of the Trade Secrets Protection Act). After termination of the cooperation, the Contractor shall delete or return to tesa all information received, including all copies made, unless they are subject to statutory retention obligations. The completeness of the deletion or return shall be confirmed to tesa in writing upon request.
- 17.2 The Contractor undertakes to comply with the applicable data protection law. It shall process personal data exclusively for the purpose of providing the Contractual Services and shall ensure that its employees have access to the personal data only to the extent necessary for this purpose. Upon tesa's request, the parties shall enter into such data protection agreements (e.g. contract on commissioned processing) as tesa deems necessary, samples of which shall be provided by tesa. Upon request, the Contractor shall provide tesa with evidence of the organizational and technical measures it has taken to protect personal data. If the Contractor is allowed to involve third parties in the provision of services, the Contractor shall ensure that any necessary data protection agreements are concluded.
- 17.3 The contractual services must be developed and configured in accordance with the principles of Privacy by Design and Privacy by Default. They must not have any functions by means of which the Contractor or third parties can process personal data (including so-called calling home functions), unless the parties have expressly agreed on this.
- 17.4 The Contractor may only refer to the business relationship with tesa in advertising or other documents with the prior written consent of tesa. This shall also apply to the use of our trademarks, trade names and other designations.

## 18. Liability

The liability of the parties shall be determined in accordance with the statutory provisions.

## 19. Insurance

The Contractor is obligated to take out business liability insurance with coverage appropriate to the risk of the order, to maintain it for the duration of the contractual relationship with tesa, and to provide tesa with proof of this immediately upon request.

## **20. Anti-corruption Clause**

tesa and the Contractor undertake to take all necessary and appropriate measures to avoid corruption. In particular, they undertake not to offer, promise or grant, directly or indirectly, any benefits or other advantages (such as money, gifts of monetary value or invitations that are not predominantly of a business nature, e.g. to sporting events, concerts, cultural events) to employees and managing directors of the other party, including their relatives and all group companies, or to have them offered, promised or granted by third parties, and affirm that they have not done so with regard to the conclusion of the contract. In the event of violations, the other party shall be entitled to terminate all existing contracts without notice after prior unsuccessful written warning. In the event of a serious violation, a warning shall not be required.

## **21. Miscellaneous**

- 21.1 The Contractor may assign contractual rights or obligations only with our prior written consent. The Contractor shall not be entitled to assign its claim against tesa or to have it collected by third parties without our prior written consent, which shall not be unreasonably withheld. If the contractor assigns its claims against tesa without our consent, the assignment shall nevertheless be effective, however, we shall be entitled to make payment to the contractor or the third party at our discretion with discharging effect.
- 21.2 If the direct or indirect controlling influence on the Contractor changes during the term of the contract, the Contractor shall notify us of this change without delay. If the change is likely to materially impair our legitimate interests, we shall be entitled to terminate the contract for cause
- 21.3 The place of jurisdiction for any disputes shall be Hamburg. However, we shall also be entitled, at our discretion, to sue the Contractor at another permissible place of jurisdiction.
- 21.4 The legal relationship shall be governed exclusively by the substantive law of the Federal Republic of Germany to the exclusion of any deviating conflict of laws rules and to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).
- 21.5 Should a provision be wholly or partially invalid or not be valid, the validity of the remaining provisions shall remain unaffected. The invalid provision shall be replaced by a provision that comes closest to the contractual objective in economic and legal terms, taking into account the interests of the parties. The same shall apply in the event of a gap in the contract.
- 21.6 Amendments or supplements to this Agreement must be made in writing to be effective. This also applies to the waiver of the written form requirement. For the purpose of executing or amending this Agreement, facsimile signatures, PDF image signatures or electronic signatures executed via an electronic signature service (e.g. DocuSign, AdobeSign) shall be deemed to comply with the written form requirement.