

# General Terms and Conditions

(status: 11 October 2019)

## 1. General terms

- a. The following terms apply to contracts between "TSI Telematic Services GmbH", hereinafter referred to as "TSI" and its contractual partners, hereinafter referred to as "Customers", for deliveries of devices, programs, data, services and other products, and for the performance of services, hereinafter referred to as "Products" or "Services". TSI can also contract third parties for the delivery of these Products or performance of these Services. Contracts will be effectively concluded exclusively on the basis of the following terms. The Customer acknowledges these terms when placing an order, registering online or accepting the delivery, even if these terms should contradict its own general terms and conditions in full or in part. All deviations from these terms shall be non-binding for TSI, even if TSI does not explicitly object to them.
- b. The place of jurisdiction is Berlin.

## 2. Subject

- a. TSI performs Services, provides consulting, project development, integration and implementations, and sells products in the telematics segment, which enable the Customer, besides digitalising its processes, to record, bill, monitor, optimise and perform its activities among other.
- b. For this purpose, TSI operates a telematics platform via the internet portal "www.tsi-telematic.com/fleetmanager" and its related systems, by means of which mobile objects, processes or activities and similar can be monitored, also automatically in connection with installed monitoring modules or other (mobile) data processing devices, e.g. smartphones, which can send control data manually, semi-automatically or fully automatically to the servers designated for this purpose. These control data can be positioning data, times and periods, temperatures, speeds and much more. TSI receives these data and processes them visually and graphically in a clearly structured format, archives them, analyses them, if applicable depending on the Product or Service used or it triggers further processes, actions, services, etc. that build upon this (e.g. alarm).
- c. If the Customer uses the TSI Telematics platform or if TSI processes data on commission for the Customer in any other way, in particular but not exclusively, personal data of any kind, TSI performs additional services in commissioned data processing for the customer and the "Supplementing Terms for Commissioned Data Processing" apply. Contractually agreed commissioned data processing is performed in that case.
- d. The Customer is responsible for sending only the data to TSI, which are actually permissible pursuant to the law. It is aware that more data can potentially be sent technically than are permissible by law. TSI does not accept the responsibility for the transmitted or displayed data. Which data will be transmitted depends on the used and selected Service, the manufacturer, and type of the used monitoring modules or devices, as well as the chosen Products and product parameters. If these data contain or can contain personal data, the Customer assures that it fulfils its duties, as the data controller responsible for the data processing, according to the German Federal Data Protection Act and the General Data Protection Regulation, in particular with regard to the information of the data subjects of the processing and the protection of their rights.
- e. The transmission of the data, depending on the employed transmission technology (e.g. mobile communications, SMS, email, radio, WiFi), can take place via public or non-public networks, in the course of which one or more providers including mobile phone providers, internet service providers (ISP) or third party network operators of any kind can be involved. The respective provider, not TSI, is liable for this transmission path. The Customer may require separate agreements with the respective provider for this purpose.

## 3. Liability, availability, performance

- a. TSI shall only be liable for direct damages, regardless of the legal reason, in particular in result of delay, impossibility, culpa in contrahendo, positive breach of contract, culpable violation of reworking obligations and tortious act in cases of intent and gross negligence by TSI or its employees. Liability for consequential damages is excluded. In each case, TSI's liability shall be limited to an amount of EUR 1,000.00 per damage event.
- b. TSI's liability in the case of personal injuries and based on compulsory legal regulations remains unaffected.
- c. TSI assures an availability of its Services of 98% on annual average. Excluded from this are pre-scheduled service times and periods during which the servers cannot be reached due to technical or other problems that are outside of TSI's sphere of influence (force majeure, fault of third parties, etc.) TSI GmbH shall also not be liable for damages or consequential damages that might be entailed by this for a Customer.
- d. Liability shall only apply to data that have in fact verifiably reached the TSI servers.
- e. If the Customer defines alarm messages and if these are not transmitted to it in the event of an alarm, TSI shall be liable only for intentional or gross negligent conduct.

## 4. Blocking of Services

- a. If a Customer does not adhere to the Terms of Use, the legal requirements or these GTC, and especially if it is in arrears of payment, TSI will be entitled to block the access immediately without prior warning. In the event of a block because of a violation of the Terms of Use, the legal requirements or these GTC and in the event of arrears of payment, the Customer shall not be entitled to any claims against TSI, regardless of the legal reason.

## 5. Customer's duties

- a. The Customer assures that the address details provided by it are correct and complete.
- b. The Customer is aware that the used monitoring modules might potentially also send data that are prohibited pursuant to the data protection laws and that it must not use these data for the monitoring of others. In that case, it shall stop the data transmission or have it be modified accordingly.

- c. All data are subject to data protection. The Customer shall take measures so that these data are not made accessible to any unauthorised person. The Customer furthermore undertakes to use or regularly reconsider the use of the security options, which are offered additionally by TSI (e.g. full encryption, strong or 2-factor authentication process), in accordance with its own security precautions and security strategy.

#### 6. Data protection

- a. TSI will not acquire any rights on the data (in particular the personal data of third parties) stored by the Customer in the course of the use of the Services. TSI, however, is authorised to use these data exclusively on instruction from the Customer in accordance with the following provisions and within the scope of this contract.
- b. In the case that a commissioned processing of personal data takes place, TSI shall process, use, or access personal data exclusively within the scope of the agreement made and upon instruction from the Customer. In the case of commissioned data processing, the “Supplementing Terms for Commissioned Data Processing” shall apply.
- c. In the case of commissioned data processing, generally the Customer will be responsible with regard to personal data for compliance with the regulations pursuant to the German Federal Data Protection Act (BDSG).
- d. The Customer shall remain the “data controller” both in the contractual sense as well as in the definition of the data protection laws. Whether and to what extent third parties enter or access data shall remain solely at the Customer’s discretion. Insofar as the Customer permits third parties to use personal data to this end, the Customer shall ensure a corresponding organisation of the rights management, password assignment, etc.
- e. TSI can also analyse processed data statistically or in anonymised form and use the processed data, e.g. for its Products, the development or provision of new solutions as well as solutions for others, or the further development of existing solutions, the aversion of risks or for the optimisation of own or related processes. Where such a use takes place, TSI guarantees complete anonymisation. The data will not be transferred otherwise. Reports, information or data transfers to supervisory authorities and similar based on compulsory legal regulations or court orders remain unaffected thereof. In such a case, TSI shall inform the relevant Customer in an appropriate way insofar as this is permissible.
- f. The Customer is generally not entitled to demand access to the rooms in the computing centres of TSI and those of its contractual partners where the technical operation of the Services used by the Customer takes place. This does not affect the entry rights of the Customer’s data protection officer upon a written announcement for the check of compliance with the requirements pursuant to Sec. 64 BDSG and other handling of personal data by TSI in accordance with the law and the contract, within the scope of the operation of the Services pursuant to this contract.
- g. TSI shall ensure the technical and organisational security measures as well as the measures according to Sec. 64 BDSG.
- h. On termination of this contract, TSI shall not continue to be authorised to use the data. TSI shall see to the subsequent deletion in the course of the customary data scrubbing, unless provided otherwise. The data can be handed over to the Customer in a commonly used format against the refund of the costs.
- i. TSI can perform the Services through subcontractors in the domestic territory and abroad, but it shall agree obligations corresponding to the requirements of paragraph 6 with the subcontractor.
- j. In the case of subcontractors outside of the European Economic Area, a sufficient data protection level shall be ensured by TSI.
- k. If the Customer chooses a payment method via international finance networks (e.g. credit cards) or internet payment service providers (e.g. PayPal, paydirekt) for the payment of the Services performed by TSI, TSI expressly points out that TSI cannot assure complete data protection of the data required for the payment (name, address, Customer’s payment information, general contract information such as the chosen Products) and, further, that foreign firms can also be involved in the payment processing. In that case, these data can also be transferred to and processed by additional third parties, e.g. affiliated banks, supervisory authorities, credit bureaus or similar external firms required for the payment or risk assessment. The kind and scope of such a possible data transfer is determined by the terms of use of the respective payment service provider. Customer data and data resulting from the Services of TSI on behalf of the Customer remain unaffected thereof and they are subject to data protection pursuant to the BDSG where applicable.
- l. TSI is authorised to process and use the inventory data of its Customers, insofar as this is required for the consulting of the Customers, advertising and market research for own purposes and for the structuring of its Services as appropriate to need. The Customer can object to this use of its data at any time. TSI shall provide complete and free information on request at any time to the Customer about the stored data stock to the extent that it relates to it.
- m. TSI expressly informs the Customer that the data protection for data transmissions in open networks such as the internet cannot be guaranteed to the full extent according to the present state of technology. Other participants on the internet might also be able under certain circumstances to interfere with the network security without authorisation and to control the traffic of messages. The Customer has the full direct responsibility for the security of the data transmitted by it and/or stored by it on web servers.

#### 7. Conditions on the use of instant text messages/short messaging service (SMS)

- a. SMS text messages/short messages (SMS) are generally additional services subject to costs. The use of SMS is subject to the following conditions:
  - (1) Message length:  
SMS can contain at most 160 characters (70 characters in Unicode) according to the state of technology. Longer messages can consist of several composed SMS. Individual SMS shall be charged in each case, regardless of whether messages use several SMS.
  - (2) Limit:  
The number of SMS that can be sent per user is limited to 15 SMS per month. The user has the possibility to optionally change this limit or deactivate the sending of SMS entirely. The limit can be changed under Settings/General/SMS of the TSI Monitor settings. All sent SMS of the previous month and the current month are documented there.
  - (3) Liability:  
TSI is not liable for sent SMS, in particular also not in the case, for example, when a larger number of SMS has been sent due to a faulty configuration. It is expressly pointed out that there is a limit, in order to prevent high costs from many sent SMS, and that it is in the user’s own responsibility to apply this limit.
  - (4) Spam, liability for contents:  
The user shall ensure when using SMS that the chosen recipients of the SMS agree to the receipt of the SMS. The user is moreover responsible for the content of the messages.
  - (5) Free SMS:  
Unless agreed otherwise, TSI shall grant 10 free SMS per Customer per month. Additional SMS beyond the chosen contingent will be billed at €0.19 per SMS (plus VAT).

#### **8. Requirements of form**

- a. Contracts and agreements can be concluded in writing or electronically with TSI. In all cases, the respectively most recent version of the General Terms and Conditions applies.
- b. Orders for changes, additional services or other measures to be implemented by TSI shall be placed in writing (also by email).
- c. Legally relevant declarations and notifications of TSI to the Customer will be delivered in electronic form to the informed of email address. The Customer shall ensure to inform TSI of any changes of the email address without request.
- d. The invoicing for performed Services will be issued exclusively in electronic form and, depending on the posted Services, be delivered by email to the Customer or be made available to the Customer for retrieval on the TSI portal.
- e. Any changes, additions or the partial or full cancellation of the contract require the written form, as does the modification or cancellation of the requirement of the written form. Exclusively the law of the Federal Republic of Germany applies to the contracts concluded by TSI on the basis of these General Terms and Conditions and the claims arising from them, regardless of their nature.

#### **9. Changes to the General Terms and Conditions (GTC), service specifications and prices**

- a. If TSI intends to make changes to the General Terms and Conditions, the service specifications or the prices, the changes shall be notified to the Customer in text form at least six weeks before their taking effect.
- b. The Customer's agreement will be deemed given if the Customer has not informed TSI in writing of its rejection ("objection") within four (4) weeks after receipt of the changed terms. In the event of an objection, the Parties will attempt to reach a mutual agreement within two (2) weeks after the objection was raised by the Customer. In case it cannot be mutually agreed on a solution, TSI shall continue the existing contracts on the present conditions until the end of the agreed contract term if possible. If an automatic extension of the contract term is agreed in that case, this extension shall not apply. If the continuation of the Service on the existing conditions is unacceptable for TSI in appropriate consideration of the Customer's interests, both Parties shall have a right of extraordinary termination. If no objection is raised by the Customer, the changes will become part of the contract on their effective date. TSI shall expressly point out this consequence to the customer in the notification of the change.
- c. If TSI is itself forced to make changes to the General Terms and Conditions for legal reasons or due to regulations of the supervisory authority or modifications of these, a right of extraordinary termination due to these changes shall not apply.

#### **10. Final provisions**

- a. In the event of discrepancies between the provisions of these General Terms and Conditions and the provisions contained in terms and conditions in other languages, the respectively most recent German version shall take precedence and be decisive if in doubt.
- b. If provisions of these General Terms and Conditions and/or of the contract should be or become invalid, this shall not affect the validity of the remaining provisions. Instead of the invalid provision, a provision shall apply in replacement, which corresponds or at least comes close to the purpose of the agreement, as it would have been agreed by the Parties to reach the same economic outcome if they had been aware of the invalidity of the provision. The same applies to incompleteness.