

Terms and Conditions (Allgemeine Geschäftsbedingungen; AGB) **for Business Purposes**

Introduction to Our Services & General Terms

TACHOfresh GmbH ("TACHOfresh"), located at Freiheitstraße 120 in D-15745 Wildau, Germany, sells multi-vendor hardware, develops and provides software for companies of the logistics and transport sector. This application includes archiving and analysis of digital tachograph related data (vehicle and driver files), and mobile location technology in combination with mobile communication.

The following terms of delivery, service and payment apply exclusively and for all contracts, deliveries and other services including consulting services by TACHOfresh for commercial partners ("customer"). Hence, customers of TACHOfresh can only be commercial companies.

For some services, additional terms may apply ("Terms of Use"). Services by TACHOfresh may be substantiated by further rules of conduct or guidelines for certain features or offers. In case of conflict between agreements, the more specific rules shall take precedence. Hence, specific agreements shall precede general terms as follows: Terms and Conditions (German: AGB), Terms of Use (German: Nutzungsbedingungen), Rules of Conduct (German: Verhaltensregeln) – where available.

All components of the contract such as Terms and Conditions and/or Terms of Use and/or additional provisions, Rules of Conduct or guidelines form a legal entity which take effect as an entirety towards the customer. These Terms and Conditions apply exclusively. Any divergent terms of business of the customer shall not apply. Counter-confirmation by the customer, with reference to his terms and conditions, is hereby objected to. You may view, download and print the currently valid Terms and Conditions as well as relevant, substantiated Terms of Use at our website. All agreements, particularly all contractual side agreements and additional contractual amendments, require our written confirmation for their validity. This also applies to the alteration or termination of specific clauses of these Terms and Conditions.

Article 1: Conclusion of Contract

- (1) The customer orders hardware and services via order form or E-Mail at TACHOfresh.
- (2) The contract shall be deemed concluded by sending out an explicit order confirmation or by delivery of ordered products.
- (3) For products not listed in the order confirmation, no purchase contract is concluded.
- (4) Customers have to create a user account prior to the order process to ensure that products and services provided by TACHOfresh are used by companies only.
- (5) Special offers by TACHOfresh are non-binding, unless agreed otherwise. This clause refers to products sold by TACHOfresh, which are limited in supply and shall apply unless expressly agreed otherwise. If the product is not available, TACHOfresh shall immediately notify the customer and reimburse the contractual partner for any payments already made without delay. Article three (3) of this agreement shall remain unaffected by this clause.

TACHOfresh GmbH

Freiheitstraße 120, Aufgang C
D-15745 Wildau / Berlin
T: +49 (0)3375 528 30 - 0
F: +49 (0)3375 528 30 - 19

Geschäftsführer:
Walther Bernard
Dr. Susanne Kirsch
Falko Schmalenberg

Handelsregister:
Amtsgericht Cottbus
HRB 9722 CB

Steuernummer:
049/121/04724
UST-ID DE 176758813

Gläubiger-ID:
DE87ZZ00000049813

Bankverbindung
Berliner Sparkasse
IBANDE62100500001450016339
BIC BELADEVB333
Kto Nr. 14 500 163 39
BLZ 100 500 00

- (6) Verbal supplementary agreements are invalid unless agreed upon in writing by both contractual partners.

Article 2: Provision of Service

- (1) TACHOfresh shall fulfill all contractual services with all customary prudence associated with commercial transactions.
- (2) TACHOfresh shall obtain the right to employ third parties for providing services and maintenance. The customer shall only be allowed to employ third parties unless this employment jeopardizes and/or opposes essential interest regarding the contractual agreement; TACHOfresh shall need to explicitly agree thereto in writing. Additionally, the customer shall be allowed to employ third parties, if TACHOfresh has missed to declare mending of a defect within a reasonable period of time or if TACHOfresh explicitly refuses a service or if the customer cannot be expected to wait for the service/repair work.
- (3) Customary deviations from the product description, which are obligatory in compliance to legal regulations or due to upgrades in regards so improving science and technology, shall be permitted to TACHOfresh unless they obstruct contractually agreed services and differ from the contractually agreed functionality of the product.

Article 3: Delivery Deadlines, Delay and Non-delivery

- (1) Partial deliveries shall be permissible to a reasonable extent, unless there is doubt regarding the purpose of the contract and the provision of the contractually established service within a reasonable period of time or within the contractually defined start date.
- (2) Both parties shall be entitled to withdraw from the contract, in case of force majeure or further incidents not foreseeable at the time of the contract conclusion, such as interruptions of operations of all kinds, delays in transport, strikes, legitimate lookouts, governmental measurements, deficiencies in energy, adverse weather conditions, as well as incidents which are not in TACHOfresh's responsibility and which hamper or prevent a delivery as non-delivery, wrong delivery or not in-time delivery of supply by TACHOfresh's supplier(s). Both parties shall only be entitled to withdraw from the contract if said incidents are not eliminated in due time.
- (3) The provider shall notify the customer immediately about temporary delays. Delivery or service deadline shall prolong themselves accordingly; fixed dates regarding time of delivery or service shall also be moved accordingly.
- (4) If the customer is in default of contractually agreed obligations, delivery and service deadlines/appointments asserted by TACHOfresh shall automatically be extended by thereof resulting period of time. This shall also apply if the customer is in default of obligations in a current business relation or relation in accordance to Article 273 BGB (Bürgerliches Gesetzbuch; German Civil Code) or other contracts with TACHOfresh.

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- (5) In the event TACHOfresh is obliged to pay compensation due to non-delivery or late delivery, the amount of the compensation shall range between the foreseeable amount of the loss at the time of contract conclusion and a maximum amount of 500 Euros.

Article 4: Shipment and Transfer of Risk

- (1) TACHOfresh shall be entitled to choose the shipment route and carrier unless otherwise established to in writing. The shipment shall be insured upon customer's request and billed to the customer.
- (2) If the shipment is delayed by the customer for any reason, TACHOfresh shall store the goods at the customer's expenses and risk.
- (3) The risk of price shall be passed to the customer when the product is handed over to the customer upon collection as well as with notification of the readiness for shipment and the singling out of the product from the TACHOfresh warehouse. The risk of price shall be passed to the customer not later than when handing over the ordered goods to carrier, forwarding agent or other entities responsible for the shipment.

Article 5: Packaging

TACHOfresh shall ship orders appropriately packed; customers will be billed separately for packaging costs. Where TACHOfresh is obliged to take back packaging material, deliveries shall only be accepted at specific collection facilities ("Rücknahmestelle"). Shipping cost for sending back packaging material shall be paid by the customer.

Article 6: Prices and Payments

- (1) All prices are subject to value added tax.
- (2) Unless otherwise specified in writing and there is no conflict with existing legal regulations, all payments are due immediately. This shall apply regardless of whether discounts ("Skonto"/"Skontoziel") have been granted.
- (3) Credits in relation to drafts and checks shall be given minus potential expenses effective on the day on which TACHOfresh will be able to freely expose of the equivalent.
- (4) If the customer's payment is delayed and the total amount of the thereof resulting claims does not exceed ten (10) percent of the total or if TACHOfresh receives notices of circumstances that cause doubt in the creditworthiness of the customer after conclusion of the contract, invoices issued by TACHOfresh shall be promptly and fully due and payable, regardless of the duration of any bills of exchange received or credited.
- (5) In case TACHOfresh receives notices of circumstances that facilitate doubt in the creditworthiness of the customer after conclusion of the contract, TACHOfresh shall be entitled to perform outstanding services or ship outstanding deliveries only against down payment or provision of security by the customer.
- (6) The right of retention of payments or the setting of counterclaims shall only be legitimate if the counterclaims are undisputable and have a final and binding effect.

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- (7) Payments to personnel or other representatives of TACHOfresh shall only be regarded as fulfillment if representatives prove to have a written authority of collection on behalf of TACHOfresh. TACHOfresh state to explicitly inform his representatives about their duty of disclosure towards clients.

Article 7: Reservation of Proprietary Rights

- (1) TACHOfresh shall retain title to all items delivered (“reserved goods”), until all claims against the customer resulting from the business relation shall be balanced – including future claims and from contracts signed simultaneously or at a later date. This shall also apply when single or all claims by TACHOfresh have been transferred to a current invoice (“current account”) and the account was balanced and accepted.
- (2) In case of seizure or other third-party actions affecting reserved goods, the customer shall notify TACHOfresh immediately in writing. The customer shall bear all expenses regarding prevention of said circumstances and to reclaim reserved goods where necessary.
- (3) The customer shall be authorized to resell reserved goods to third-party entities only within the scope of his regular business operation. Specifically, the customer shall not accept payments by draft or checks (“Scheck-Wechsel-Verfahren”). Other payments such as security collateral arrangements or pledges shall be subject to explicit approval by TACHOfresh.
- (4) TACHOfresh is entitled to withdraw this authorization of resale, if the customer behind in his payments or violates other fundamental contractual obligations, or if TACHOfresh becomes aware that the customer is in imminent danger of insolvency or excessive debts.
- (5) In the case of reselling reserved goods, the customer shall be obliged to reserve property rights of reserved goods until his customer made the final payment. Without this reservation the customer shall not be authorized to resell reserved goods.
- (6) The customer shall assign future purchase price claims or other claims or remuneration including ancillary rights, which may result from reselling reserved goods to his customer, to TACHOfresh. This shall apply regardless of whether the reserved goods are resold with or without further processing.
- (7) TACHOfresh authorizes the customer to collect the assigned claims until further notice. Where clause four (4) of this Article applies regarding the exercise of the right of revocation, TACHOfresh shall be entitled to demand that the customer notifies the debtors of the assignment and that said debtor shall be obliged to make payments to TACHOfresh directly. Additionally, TACHOfresh shall be entitled to notify the debtors of the assignment after given fair warning.
- (8) Where reserved goods are processed in compliance with Article 950 BGB, the customer shall be obliged to notify TACHOfresh of this circumstance immediately in writing and to transfer ownership of the processed item safely until full payment is effected.
- (9) TACHOfresh shall be obliged to transfer said items to the customer once full payment is received.

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(10) In case the reserved goods are processed or are inseparable with other items not belonging to TACHOfresh and none of these items is considered an essential part, TACHOfresh shall acquire co-ownership of said items. The thus acquired co-ownership shall also be regarded as reserved goods as defined in this agreement. TACHOfresh shall be obliged to release the security deposits to which he is entitled insofar as their realizable value exceeds the receivables secured by no more than twenty (20) percent.

Article 8: Warranty for Goods and Software, Liability

(1) Statutory warranty claims shall apply according to Merchant's law, Article 433, 437 BGB under consideration of the following modifications:

1. The condition of the goods shall be measured by the specification as indicated in the product description and not official statements, recommendations or advertising.
 2. The customer shall be obliged to inspect incoming goods immediately upon delivery to determine their integrity, completeness and any defects as well as reporting obvious defects right away. Otherwise the right to assert warranty claims shall be excluded.
 3. The right to invoke an advance on costs for rectification of defects shall be refused by the supplier.
 4. The warranty period for repair, replacement, withdrawal and reduction shall be one year, in effect as of the date of transfer of risks.
- (2) Goods, which are alleged to be defective, must be returned to TACHOfresh either in their original packaging or in accordance with trade and commercial practice. The right to assert warranty claims shall be refused by TACHOfresh where the customer rectified defect goods or made modifications in an unauthorized and improper manner.
- (3) Liability for the loss of data shall be limited to common costs and efforts that would have accrued through making regular backup copies according to the estimated risk.
- (4) The customer or partner is aware that the current state of technology does not allow the delivery/production of navigation technology/maps, which are accurate and complete in every detail. Thus said, TACHOfresh shall not be liable for accuracy, completeness or the best possible course of the displayed route in navigation devices. Both parties agree that electronic navigation can under no circumstances replace the driver and does not in any way resolve the driver from his legal obligations in road transport. This applies in particular in circumstances where there is uncertainty whether or not a specific route can be taken in regards to road conditions and legal restrictions.
- (5) Defects in delivered software or of data transmitted by on-board units shall be rectified by TACHOfresh within period of liability of one (1) year from the transfer of risk and after receiving

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notice. It shall be TACHOfresh's choice to rectify any defects either through free rectification or replacement delivery. Where the defect does not compromise the use of the software or data in an unacceptable manner, TACHOfresh shall be permitted to rectify defect with the upcoming update.

- (6) TACHOfresh shall not be held responsible for minor neglect of obligations, unless they pose a breach in contractual obligations, warranty agreements, cause injuries to life and limb, and to health or lead to claims in accordance with the product liability law. The same shall apply to breaches of duty by TACHOfresh's vicarious agents.
- (7) In case of minor negligence, TACHOfresh shall only be liable if accused of grossly negligent breach of contract – so-called material contractual obligation. This term refers to obligations that are critical to the contract. Contractual partners need to trust that these terms are met; to infringe these obligations would cause a breach of the contractual purpose. Material contractual obligations apply in particular to the obligation of a delivery without defects in both the goods and the title as well as advisory, protective, custodial and duty of care obligations that enables the client to use the item in the contractually established manner.
- (8) Liability for minor negligence shall be restricted to predictable, typically occurring damage. The same shall apply to breaches of duty by TACHOfresh's vicarious agents.
- (9) Where TACHOfresh provides data for the purpose of being downloaded by the customer, the transfer shall be made onto a device provided by the customer. Thereafter, the customer shall carry responsibility and risk for the data. TACHOfresh shall not be liable for seamless transfer of data to the end users if the customer is using a third-party provider (such as internet- or GPS-carrier).
- (10) In case the customer uses GPS signals, TACHOfresh shall not be liable for a permanent connection to satellites or that satellites shall transmit civilian data during a certain time frame. Neither shall TACHOfresh be liable for future changes in accuracy of GPS-positioning, for statics or other disruptions in data transmission, or further disruptions that are beyond TACHOfresh's control.

Article 9: Repair

The customer is entitled to receive a cost estimate for repairs, which are not part of the warranty; however, the customer expressly has to indicate so. Costs for an estimate shall be charged whether or not repairs are performed. The costs for shipping and packaging as well as the risk of accidental loss shall remain with the customer. Invoices for repairs shall be due immediately. Article six (6) of this agreement shall apply accordingly.

Article 10: Copyright Laws and Rights of Use

- (1) TACHOfresh sells software for providing and displaying geographic location data; the data is displayed in a graphical and textual format. Cartographical elements are not property of TACHOfresh.

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- (2) The customer shall receive an exclusive, non-transmittable and time-limited right of use of the software as well as of transmitted data. Other than that, the customer shall not receive any rights, in particular no rights of ownership or similar rights.
- (3) Licensed elements shall be limited in use in accordance to the contractual agreement (in particular in regards to number of users at the same time, servers and subscribers).
- (4) The license shall only be granted for personal use or internal use by the customer. The transfer of rights to third-party entities, either in return for payment or free of charge (e.g. by time-sharing, lease, rent, or loan), shall be prohibited.
- (5) The end user shall only be allowed to use the software and data in the contractually established manner and to the contractually agreed extent as stated in this agreement. Retranslation of the program code into other code forms (decompilation) as well as extraction of knowledge regarding single production stages (reverse-engineering) and removal or bypassing of potential copy-protection shall be prohibited. The customer shall not be allowed to copy data provided to him, unless expressly stated in Articles 55 (a), 87 (e) German Copyright Law (UrhG).
- (6) The customer shall be prohibited to remove potential copyright information. It shall be prohibited to use the product as a template to create rival products or to transmit information that could be used to create a rival product.
- (7) In the exceptional case that the software or the data within the scope of proper use might reach a non-EU country, all legally binding export rights have to be upheld.

Article 11: Data Protection, Data Retention

- (1) TACHOfresh shall survey, process and use personal data of the customer exclusively within the scope of the contractual relationship and in compliance with current legal regulations. For any other processing procedures and/or utilization of personal data the customer shall need to express consent and/or shall be allowed where permitted to use by law.
- (2) Where hardware and/or software by TACHOfresh is used to process personal data, the customer shall ensure to use said hardware/software in compliance with current data protection regulations. Particularly, he shall need to obtain consent from the parties affected by processing of personal data. Alternative use of hardware/software shall be prohibited. The same shall apply to by the customer employed third-parties.
- (3) In case the customer, his employees, representatives, business partners or participants have used the application in an improper or unauthorized manner and from this use claims against TACHOfresh arise, the customer shall indemnify TACHOfresh from such claims. The aforementioned indemnification shall also apply to expenses in connection with legal and other processings, unless the cause for the claim does not lay with impropriety expiated by TACHOfresh.
- (4) TACHOfresh will, upon contract termination and 3 months after the contract end-date of the last vehicle of a customer, irreversibly delete any and all vehicle- and driver-files of the customer from their servers.

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Article 12: Contractual period and Termination

- (1) Contracts commence on the first day of a month that follows the signing of the contract by the customer and will be concluded for the specified period unless stated otherwise. The contract will prolong itself for the duration of twelve (12) months unless the customer expresses otherwise.
- (2) Both parties shall be entitled to ordinary terminate this agreement on three (3) months' notice prior to the end of the contract. The mutual right to extraordinary termination for serious reasons shall remain unaffected. TACHOfresh shall have this right to extraordinary termination if:
 - a. the contractual partner repeatedly fails to meet payment targets by more than ten (10) days;
 - b. TACHOfresh becomes aware of a request to open insolvency proceedings for the customer's assets;
 - c. foreclosure is levied by third-parties which include the rights arising from this agreement;
 - d. substantial changes occur in the shareholder or ownership structure of the contractual partner.
 - e. TACHOfresh is notified about unauthorized use of the software.
- (3) TACHOfresh shall maintain the right to extraordinary termination in case that a supplier – for any given reason – terminates the transfer of data resulting in a considerable change in purchasing conditions and to a non-economical performance of the contract in regards to the therein agreed conditions on the part of the TACHOfresh or that the supplier considers the use of data as improper in regards to the contractual agreement.
- (4) Any terminations shall require a written form.

Article 13: Final Clauses

- (1) The laws of the Federal Republic of Germany shall apply with the exception of the UN Law on International Sales (CISG) and any other international conventions, even after being incorporated in German law, shall not be applicable. In case of a legal dispute the provider shall have the choice to base relations on the law that applies in the country of the contractual partner.
- (2) If the Purchaser is a merchant (Kaufmann) as defined by the German Commercial Code or a legal entity under public law or separate funds under public law, place of jurisdiction for all disputes regarding this contract shall be Berlin, even after its termination. Jurisdiction for all disputes against the provider shall executively be Berlin; for lawsuits against the reseller by the provider other places of jurisdiction shall optionally be accepted.

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- (3) The German version of the Terms and Conditions set out in this agreement also account for business relations with foreign customers. Translated versions of the agreement sent to foreign reseller merely serve to provide a boarder comprehension of the content. In case a difference of interpretation should occur, the German version of the agreement shall prevail over the translated version.
- (4) Otherwise, the Terms and Conditions shall apply in the respective current version. In case the Terms of Use should contradict the Terms and Conditions, the Terms of Use prevail the Terms and Conditions.

Wildau, November 2022

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