

## **TACHOfresh Terms of Use**

### **General Terms**

These Terms shall govern the use and provision of TACHOfresh Software by TACHOfresh GmbH, Schmiedestraße 2 A in D-15745 Wildau, Germany. Along with the General Terms and Conditions they form a legal entity; customers are obliged to abide by both regulations. The term “customers” refers to reseller.

Reseller are those companies that pass on our integrator software to an end-customer – either with reference to the actual service provider or by attaching their own brand logo and/or under their own brand name.

Provider is the producing company, TACHOfresh GmbH.

Services based on a software provided by TACHOfresh offer secure transfer of driver and vehicle data to a server, where it will be stored and archived for of a period of twenty-four (24) months. During this time, data is provided for evaluation and analysis tasks. A distinct function will remind users to store driver and vehicle data on a regular basis. Depending on the software module, available features include live data, driving hours, working hours, and remote download of driver and vehicle data.

These Terms of Use, the General Terms and Conditions, and the Contractual Terms shall apply exclusively. Contractual terms by resells shall not apply. Any confirmations or contracts by the reseller with deviating terms and conditions are hereby expressly contradicted by TACHOfresh in advance.

### **Article 1: Subject of the Contract**

- (1) These Terms shall govern the use of TACHOfresh software by the reseller/end-customer, pursuant to the current product descriptions of the provider.
- (2) The software will run as a Cloud-based Software-as-a-Service (SaaS) by the provider. The reseller shall be allowed to use the software for his own commercial purpose. The software shall be made available by allowing access to servers owned by the provider or by a third party, in the service of the provider. The reseller is allowed to use the software to process and store his data or/and to let the software to his own customers (end users) for a monthly fee.
- (3) Resellers shall be allowed to integrate parts of the software, which are necessary for gaining access to the Internet-based SaaS such as log-in screens, into their own website.
- (4) Subject to this contract are the provision of contractually agreed software modules and features; the technical enablement for the use of the software; the granting and/or user rights, as well as the provision of storage space for data created by using the solution. This includes storage of data created by the reseller while using the software and/or provision of data

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necessary for using the application; the later has to be contractually agreed on and will be lent to the reseller for a monthly fee.

## Article 2: Scope of Services

- (1) The provider shall supply the reseller with the most current version of the software at the data center's router port ("transfer point"); he is free use it as contractually agreed. The provider or a subcontractor shall also ensure that computer capacity, which is foreseeably required, as well as sufficient work memory and storage capacity for trouble-free data processing is made available to the user. The provider shall not be held accountable for establishing and maintaining an internet connection between transfer point and the reseller's IT systems.
- (2) If the software exclusively runs on servers of the provider or the provider's subcontractor, the reseller shall not need the copyright of the software when using the software as contractually agreed. Therefore, the provider will not grant copyrighted rights of use – subject to the provision in Article seven (7) of this agreement.
- (3) The scope of the service offered by TACHOfresh includes the following features:
  1. options for uploading driver and vehicle data to a server via secure data transfer;
  2. archiving of uploaded data for a maximum of 24 months, unless something different is contractually agreed with the reseller;
  3. deletion of uploaded data takes place according to booked services after 3 or 25 months, unless something else is contractually agreed with the reseller. Other Data like driver or vehicle information will be deleted automatically according to default deletion dates or other dates chosen by the reseller. Further detail on TACHOfresh deletion routines can be found in the current actual deletion concept;
  4. remote download of driver and vehicle data;
  5. analyses of driving and rest periods including display of remaining driving time under consideration of live data;
  6. data transfer via predefined interfaces;
- (4) Upon request TACHOfresh shall provide the reseller with a SIM-card for every on-board unit the reseller has acquired a user's license for. The usage shall be limited as follows:
  1. The SIM-card may only be used in combination with on-board unit and
  2. for transferring data from vehicle to TACHOfresh's or the reseller's Internet portal.
- (5) Ownership of the SIM-cards shall remain with TACHOfresh. The reseller shall thus return the SIM-cards to TACHOfresh after termination of the contract. In case they are not returned and the SIM-cards are continued to be used unrestricted and/or incorrectly and/or non-contractually, TACHOfresh and it's affiliated companies shall not be liable, and the reseller shall

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defend, hold harmless, and indemnify TACHOfresh from and against, any losses, costs, expenses – including reasonable attorneys’ fees that might arise from legal disputes in connection with claims of third parties.

### Article 3: Technical Availability of Application and Access to Application Data

- (1) The provider points out that limitations and restrictions may apply to the utilization of the software, which are outside the sphere of influence of the provider. They include actions of third parties that do not act on behalf of the provider, technical conditions that are due to insufficient internet connection as well as conditions connected with force majeure according to Article 4 of these Terms and Conditions. In addition, hard- and software as well as the reseller’s IT infrastructure may influence availability and functionality. If that is the case, this shall have no effect on the contractual conformity of the services.
- (2) The reseller is obliged to indicate functional failures, disturbances or interferences of provided services without delay and as precise as possible. If the reseller does not provide the assistance incumbent on him, Article 536 (C) BGB (Bürgerliches Gesetzbuch; German Civil Code) applies.
- (3) The provider owes the contractually agreed availability of the service and of user data at the transfer point as indicated in Article 4. Availability shall thereby be defined by the contractual partners as ability to use the application and data, starting at the transfer point; where necessary by using access software.
- (4) Adaption, changes and additions to the software connected to this service as well as measures for prevention, determination and elimination of malfunctions may lead to a temporary interruption or impairment of the availability of the service, provided these measures are justified on technical grounds. The provider is committed to limit these temporary interruption or impairment of the availability to no more than five (5) hours per week, whereas he strives to scheduled impairments between 6 p.m. and 6 a.m. as well as on Sundays. The provider shall not assume liability or warranty for interruptions and downtime, feasible for other suppliers or providers.

The provider is committed to offer availability and usage of his service as follows:

System availability	Description	Standard
uptime	7 days x 24 hours	99,5 %

- (5) The reseller will be informed prior to the interruption in due time and manner, such as by email or OSD message.
- (6) In event of fraudulent use of the system or a misuse that may harm reliability and plausibility or that does not correspond with the contractually designated purpose, the provider reserves the right to obtain measures which shall terminate said misuse. This shall include short-term or permanent limitation of access to the service.

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#### **Article 4: Force Majeure**

Neither the provider, nor third-party right holders shall be liable for any delay or failure in performing hereunder if caused by factors beyond reasonable control of provider or third-party right holder. This includes, but is not limited to, downtime due to mechanical or electronic failure of devices or communication, access by third-parties (including denial-of-service attacks and excessive use of system or misconduct of services), connectivity issues (telephone or other connections), computer viruses, unauthorized access, theft, operating errors, the elements, fire, explosion, power failure, equipment failure, failure of telecommunications or Internet services, or acts of any government, war or other hostility, civil disorder, industrial or labor disputes.

#### **Article 5: Specification of the rights of use and obligations of cooperation**

- (1) The use of TACHOfresh services shall commence with the initial registration of an on-board unit at the provider's Internet portal. The reseller shall be billed at every first business day of the following calendar month for all TACHOfresh services by the provider. The reseller shall communicate all use of services that are not attached to on-board units by indicating the vehicle's license plate. The reseller shall receive an invoice at the following first business day of the following calendar month, after the reseller has transmitted the end users' log-in data for each reported vehicle.
- (2) The provider shall set up an user account for the reseller. The reseller shall receive a user name and a password as well as a client number (user data); these are needed to access and make use of the account. The reseller shall thus be able to set up accounts for his end users and to book TACHOfresh services. In this context, the reseller agrees to:
  1. provide TACHOfresh with current, complete and accurate information on his end user and to communicate any changes in said data in due time and unrequested;
  2. keep his own and data of his end user confidential and to make every effort to prevent entities from directly or indirectly acquiring or improperly use of data;
  3. always secure his and his end user's data and to take full responsibility for data's utilization, albeit improper use, theft, or loss of said data; for all on provider's server stored data provider is fully responsible for storing, saving and back-up for the duration of contracted archiving period, i.e. for 3 or – depending on contract – 24 months.
  4. to inform the provider of any suspicious use of his or his end-customer's data as well as of theft, loss, or of any other case in which his or his end user's data might become publicly known; the reseller agrees to immediately change his password. Additionally, the reseller may ask the provider to close access to the integrator software to prevent any abuse by third parties, in particular if reseller deems the password insufficient or inconclusive;

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5. choose a secure password which shall not be easily determined by third parties (such as a birth date, his own name, the name of a family member or his company) and to change the password regularly.
- (3) In compliance with the aforementioned principles, the reseller may at any time change the initially transmitted user information.
- (4) If the reseller has provided TACHOfresh with an email-address, all notifications send to said address shall be regarded as received. The reseller is obliged to regularly check his emails and to promptly notify the provider in event of a change or deletion of his email address. The reseller agrees to use his email address to be used for business mailing with the provider.

#### **Article 6: Use of Software**

- (1) The reseller shall ensure that his end-customer shall use the services in accordance to the Terms of Use hereby agreed on and will abide any indications from the reseller. The reseller shall in particular oblige to
  1. handle the contractually agreed service in a way that ease of operation of SaaS-solution is guaranteed;
  2. purchase hardware and software necessary for access and faultless utilization of the service at his own expense and to keep it failure free;
  3. inform the provider of any failure, malfunction, defect or error in the operation of the service without undue delay. The provider shall use all appropriate means, within the framework of existing operational and technical possibilities, to fix these defects within a reasonable time;
  4. install, run and update anti-virus software.
- (2) The reseller may determine an additional person who may use the service in his name. In this case, the reseller agrees to inform said representative about all contractual obligations and to provide written proof of this agreement. The reseller is liable for all direct or indirect consequences or claims arising from his representative using the service.

#### **Article 7: Right of Use, Licensing**

- (1) Intellectual property rights on the service shall remain with the provider; he is owner and licensor of said service.
- (2) TACHOfresh shall grant the reseller the license to use the service in accordance with clause three (3) of this agreement; the reseller may transfer the rights of use to his end user. Nonetheless, the reseller, not the end user, will be granted the transferable right of use. This license shall be effective until terminated or for the duration of the contractual agreement.

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- (3) For the duration of the contract, the provider shall grant the reseller's end user the non-exclusive, not transferable, non-sublicensable right to load the software onto contractually agreed on end units and thus accept originating copies of the user surface. This right shall be restricted to the term of the agreement.
- (4) The reseller shall not be allowed to grant additional or different rights of use to his end user than the one's he received as transferable right of use from the provider. In the event that this agreement is infringed, the provider shall be entitled to collect additional fees, to demand compensation or to ask for an injunction.
- (5) The reseller agrees to obligate the intellectual property rights and to refrain from copying the software. The reseller may copy the contractual software to such an extent as the reproduction of the software is necessary for a flawless use of the software. Necessary reproductions are considered the loading of the software into the working memory; permanent or temporary installation or storage of software on data carriers (disk or other media) is not regarded as necessary reproduction of software. The reseller may not produce copies, which include printing of the program code.

#### **Article 8: Payment and Payment Conditions**

- (1) Unless there are no alteration in price set forth in clause four (4) of this Article, prices for TACHOfresh service modules are valid in accordance with our price list at the point in time at which the contract was signed. The reseller shall bear all expenses necessary for a proper use of the service, including costs for equipment.
- (2) The SaaS contract merely includes access to our service. Costs for connecting to our server over the internet as well as costs for communication and telephone may be invoiced separately by the internet provider or further end-customer's service provider.
- (3) The services covered by this contract shall be invoiced once a month by the providers. All prices are subject to value added tax.
- (4) The provider shall retain the right to change prices for his service. Change in prices shall apply no earlier than thirty (30) days after the reseller receives a written notification from the provider. If the change in prices ranges beyond fifteen (15) percent in regards to the formerly paid price, the reseller shall be entitled to an extraordinary termination of this agreement, whereas the extraordinary termination of the contract shall take effect on the effective date of the increase. If an increase in price effects existing end users, the reseller is entitled to extraordinary terminate the contract with effect of the effective date of the increase.

#### **Article 9: Term, Termination, Data Retention**

- (1) This Agreement shall, once approved by both parties, commence on the date of signature and continue for a period of twelve (12), twenty-four (24) or thirty-six (36) months. It will prolong

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itself for the duration of twelve (12) months unless this agreement shall be terminated in writing at least three months prior to expiry of the contract.

- (2) The mutual right to extraordinary termination for serious reasons shall remain unaffected.
- (3) The providers shall maintain the right to terminate this agreement anytime on fourteen (14) days' written notice (per email) prior to the end of the contract. Additionally, the provider shall have the right to extraordinary termination of the contract, if the reseller commits a breach of this contract or causes disruption to the service. If the provider terminates the contract with the reseller other than by reason of the breach by the reseller, the reseller might be eligible for a proportional reimbursement for the payment for the service he might have already made.
- (4) The provider may terminate the agreement for the following serious reasons:
  1. The reseller did not fulfill his obligations as stated in Article 5 (3) and Article 6 (1) of the agreement;
  2. The reseller did not meet his obligations for payment according to Article 8 of this agreement despite receiving reminder and a proposed deadline.
- (5) The end-customer can download all data stored by TACHOfresh within the scope of a current contract at any time, either individually or in full, or receive a copy of the stored data from TACHOfresh upon corresponding request.
- (6) The end-customer is responsible for compliance with all commercial- and tax-related retention periods. This also includes the minimum or maximum retention requirements for driver and vehicle data. 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.

## Article 10: Legal Information and Framework for the Reseller

- (1) The reseller accepts the provider's Terms and Conditions for SaaS solutions.
- (2) The reseller is entitled to enter into agreements with his end user's deviating from these terms.
- (3) Irrespective of whether the reseller has established regulations of his own or passes on identical Terms and Conditions as between himself and TACHOfresh, the reseller shall be contractual partner to his end-customer. Therefore, the reseller shall deal with questions or complaints by the end-customer.
- (4) The reseller shall be fully liable to the end-customer. Provided the liability can be attributed to a breach of contract by the provider, the reseller shall be entitled to pursue remedies in accordance with the liability and guarantees stated in the provider's Terms and Conditions.
- (5) The place of jurisdiction for both parties shall not be governed by the jurisdiction agreement set forth in Article 13 (2) but either by the reseller's place of jurisdiction or his specific jurisdiction agreement.

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## **Article 11: Data Protection; Storage and Processing of Data**

- (1) The provider shall be required to follow legal data protection regulations, in particular concerning regulations regarding the Telemedia Act, the Federal Data Protection Act and GDPR.
- (2) Thereby, the provider informs the reseller that the use of our service includes collecting, processing and utilization of personal data of either reseller or end-customer. This includes data transmitted by the reseller by accessing and visiting the website and by using our service. The reseller shall agree that his data and the data of his end-customers will be stored, transmitted, deleted and blocked by the provider or third parties in the name of the provider as necessary for proper fulfillment of the contract and under consideration of legitimate interests of the reseller.
- (3) The reseller shall be entitled to revoke the consent with the storage and processing of data. In that case, the reseller will no longer be able to use the contractually agreed services.
- (4) The reseller shall grant the provider or a third party in the name of the provider the right to duplicate data, provided by the reseller with the intend to store said data at provider's site, as necessary for proper fulfillment of the contract and related services. The provider or a third party in the name of the provider shall be authorized to store data at a disaster recovery system or separate disaster recovery center. For resolving malfunctions or eliminating faults, the provider or a third party in the name of the provider shall be entitled to change the data's structure or the data format.
- (5) The provider or a third party in the name of the provider shall regularly and securely store the reseller's and/or end-customer's data at a back-up server. The reseller shall be allowed to export data for hedging purposes, to the extend possible.
- (6) If and to the extent that the reseller asks the provider to process personal data at IT systems technically belonging to the provider, a separate data processing agreement (DPA) shall be concluded, which must explicitly contain contact detail for the data protection officers of both parties.
- (7) If and to the extent that the provider shall order subcontractors to process personal data from his resellers on their IT systems, the provider must enter into a separate data processing agreement (DPA) with the subcontractor.

## **Article 12: Alterations in Terms and Conditions of Use**

- (1) The provider shall be entitled to change these Terms and Conditions for example due to legislative amendment or to ensure a better functionality of the service. The provider shall inform the reseller in writing about changes in the Terms and Conditions; it shall not be necessary to transmit the adapted Terms and Conditions as a whole or a revised version of the agreement. The provider need only to supply information relating the alteration. Unless the reseller does not object within a month after receiving notice about the alteration, he shall be deemed to agree with the alterations.

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- (2) The provider shall reserve the right to transfer the contract with all rights and obligations to an entity of his choice. Unless the reseller does not object in writing within a period of four (4) weeks after receiving notice about the transfer, consent to the transfer shall be assumed.

### **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 the SaaS contract for the Integrator Software 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.
- (3) The Germany 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, October 2021

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