

**TAPIO ECOSYSTEM  
GENERAL TERMS AND CONDITIONS OF USE**

**1. CONTRACTUAL SUBJECT MATTER AND SCOPE OF APPLICATION**

- 1.1 The tapio ecosystem ["tapio"] system comprises the technology platform and the services developed on it and sold via the tapio Shop. It is operated by tapio GmbH, Karl-Berner-Straße 4, 72285 Pfalzgrafeweiler ["we", "us"].
- 1.2 The present General Terms and Conditions of Use [**Terms and Conditions of Use**] govern the provisions and conditions for procurement and use of the functionalities, products and services offered via tapio [**Services**] by the group of customers determined in clause 2.1. The use of certain services may be subject to additional specific product descriptions as well as license terms and conditions [**Product-specific Conditions**]. These Terms and Conditions of Use apply as a general framework agreement to the services offered in connection with those on tapio [**tapio services**], without our having to refer to them again in each individual case. Our Product-specific Conditions apply in supplementation of and take precedence over the provisions of these Terms and Conditions of Use.
- 1.3 The services on offer on tapio may also extend to include products and services of duly authorized third parties [**tapio Partners**], to which we merely provide access or contact information. In cases where we act as intermediaries for products and services offered directly by tapio Partners [**Partner Products**], the special terms and conditions of use of the respective tapio partner apply to such Partner Products within the scope of the relationship between the customer and the tapio Partner in question. The application of these terms and conditions of use between the customer and us remain unaffected in this regard.
- 1.4 The general terms and conditions of procurement or other business conditions of customers are not applicable unless we give our explicit consent to their inclusion in writing.
- 1.5 These Terms and Conditions of Use take effect once the customer clicks on the "I accept" button when registering for the first time or when logging onto the tapio user interface or when clicking on a corresponding checkbox field presented in connection with these Terms and Conditions of Use. Registration may

also be carried out by tapio or partners of tapio authorized for this purpose with the customer's consent, and only after prior acceptance of these Terms of Use.

- 1.6 We reserve the right to modify the Terms and Conditions of Use from time to time in accordance with Clause 10.

## 2. REGISTRATION AND ACCESS AS WELL AS PASSING ON THE REGISTRATION

- 2.1 tapio is exclusively addressed to entrepreneurs (as contemplated by Section 14 of the German Civil Code - BGB) and not to consumers. The only customers entitled to access and use tapio are those authorized by us on the basis of these Terms and Conditions of Use ("**Customer**", "**you**"). Customers can only be legal entities as well as natural persons and partnerships with unlimited contractual capacity who are deemed to be "merchants" as contemplated by the German Commercial Code (HGB) and exercise their commercial business activities.

- 2.2 Authorization calls for registration on tapio, including the entries provided for to that end (in particular: first name, surname, email address, company, company address, telephone number) as well as consent to these Terms and Conditions of Use.

- 2.3 Registration may also be carried out by tapio or by partners of tapio authorized for this purpose with the Client's consent, and only after prior acceptance of these Terms of Use.

- 2.4 The persons carrying out the registration on behalf of the customer and/or the services as defined below must be adequately qualified, reliable and authorized to enter into corresponding agreements on behalf of the customer ("**Customer Administrator**"). The Customer Administrator is required to provide full and truthful entries. In the event of a change in data after registration, the customer is required to correct the information on tapio without delay and/or if this is not possible, to notify us without delay of the relevant changes ("**Change notice**"). Change notices can only be given in writing, by facsimile or email.

- 2.5 The right granted to the customer with the authorization to make use of the offer by ("**tapio access**") is only conferred once per customer and only applies to the customer's own internal business purposes, cannot be sub-licensed and is non-transferable. Multiple registrations per customer are prohibited.

- 2.6 Logins on the user interface provided by tapio (**“Log-in”**) and the use of the interface itself must be carried out only by the Customer Administrator on principle. The customer may specify the permissible number of Customer Administrator representatives on the tapio user interface who are similarly qualified and, in their dealings with customers, must have the same authorizations as the Customer Administrator. It is prohibited in particular to allow third parties to have access to the tapio user interface or to make access data available to third parties. This does not extend to include authority to use individual services outside the tapio user interface by Authorized Service Users within the scope of rights of use acquired (clause 6).
- 2.7 The use of tapio for purposes other than those provided for in these Terms and Conditions of Use is prohibited unless we gave our explicit prior approval.
- 2.8 In cases where tapio cooperates with Sales Partners and where it is not possible to obtain tapio Services through tapio, tapio shall, subject to the provisions of Section 7.7.2, disclose the fact of registration and the data provided upon registration to these Sales Partners in order to enable the Customer to obtain tapio Services.

### **3. TAPIO OFFERING**

- 3.1 Agreeing to these Terms and Conditions of Use gives rise to a contractual relationship between us and the customer (**“Contracting Partner”**), and the customer acquires general authority for the procurement of services. However, neither does this give rise to an obligation of the customer to accept certain services, nor are we or the tapio partner under an obligation to offer the services in question.
- 3.2 Via tapio, various tapio services and partner products are available to the customer. In particular, the services may consist of software-based or cloud services. Access to services can be made in particular on the basis of application software for mobile operating systems. A prerequisite for this is the acquisition of the necessary license rights for the relevant services offered on tapio directly by us (**“tapio Services”**) or by tapio partners.

- 3.3 Via tapio, services can also be available that provide for access to external online portals. We are not providers of the products and services available from such portals and do not inspect or audit any of these. Agreements on the relevant products and services exclusively take effect between the customer and the relevant provider.
- 3.4 The subject matter of performance and content of the services provided via tapio are contained in the specific descriptions of the relevant services and products ("**Product descriptions**"). In addition, clause 7 is applicable.
- 3.5 We reserve the right to enlist subcontractors to perform the relevant services. We remain responsible to the customer for the tapio services provided by subcontractors. To avoid any misunderstandings, it is clarified that this does not apply to partner products; the tapio partners are exclusively responsible for these.
- 3.6 Except as otherwise explicitly agreed, the place performance always is our registered place of business.

#### **4. ORDERS AND CONCLUSION OF SERVICE AGREEMENTS**

- 4.1 Our offers are without engagement unless explicitly designated as binding or if they provide for a certain acceptance period. This also applies if we have made certain drawings, plans, catalogs, specimens or samples, quotations and other records as well as (possibly) software available or accessible to customers. A contractor for performance of services only takes effect on conclusion of the electronic order process provided to this end and, otherwise, by our confirmation of acceptance in writing.
- 4.2 Orders placed by customers are deemed to be binding contractual offers. Depending on the tapio service, orders may be placed either by sending an electronic declaration or in text form. We can accept offers within 10 (ten) working days of receipt. We can declare our acceptance either by carrying out the first performance act identifiable by the customer (e.g. by activating the service ordered) or by a separate confirmation of acceptance.
- 4.3 The authorization to use services is made via an area especially provided for this purpose on the user interface accessible by tapio ("**Marketplace**").

- 4.3.1 In the Marketplace, the customer can retrieve the terms and conditions of the respective provider applicable to each service app, such as product descriptions, product-specific terms and conditions, the specific scope of the service rights of use acquired, the lifetime, current termination options, fees/costs, payment terms and conditions and further details.
- 4.3.2 In legal terms, the services displayed in the Marketplace constitute a request to the customer to submit an offer to enter into an agreement for acquisition of the required service rights of use for the service in question. The customer submits an offer of this kind by clicking on the button provided to this end in the Marketplace, if applicable after providing the necessary additional information (e.g. on the scope of the order) beforehand.
- 4.3.3 We acknowledge receipt of the order from the customer immediately upon receipt. This acknowledgment of receipt does not represent an acceptance declaration. Acceptance of the offer is made by separate declaration or by activating the relevant services.
- 4.3.3.1 If the order and acceptance refer to a tapio app, a contract is entered to between the customer and us on that basis.
- 4.3.3.2 In the case of partner products, activation means the acceptance of the order by the tapio partner and an agreement is entered into exclusively between the customer and the tapio partner. Even if this transaction was not referred via tapio, we have no responsibility to the customer for the relevant service app.
- 4.3.4 Upon activation of the service, the customer is responsible for activating certain authorized engines and authorized users internally for the relevant service app ("**Internal Activation**"). Internal activation may be carried out only via the administration portal ("**Admin Portal**") provided by tapio to this end.
- 4.3.5 Internal activation by the customer may only be carried out within the limits of the "Service Right of Use" arising from these Terms and Conditions of Use (in particular, clause 6) and the remaining clauses applicable to the relevant order (clause 4.3.1). For Partner products, only the underlying special terms and conditions agreed between the customer and the

tapio partner of the relevant order are applicable [clause 4.3.1].

- 4.3.6 In no circumstances whatsoever is the customer allowed to carry out an internal activation by means of which the relevant rights of use acquired are exceeded, even if the functional scope of the Admin Portal permits this in technical terms. The possibility of such activations does not give rise to a tacit grant of any rights of use. Instances of excess usage are required to be paid accordingly by the customer, without prejudice to our entitlement to assert any additional claims, on whatever legal grounds. In addition, clause 12 is applicable.
- 4.3.7 The customer is responsible for ensuring that the Authorized Users download the relevant application software ("**Mobile Apps**") pertaining to the use of services, if applicable, from the App Stores for the relevant operating systems. Any use of services via Mobile Apps presupposes the activation of the respective Authorized Users in the Admin Portal and entry of the access data generated in the process.

## 5. REMUNERATION, PAYMENT TERMS

- 5.1 Log-ins and registrations on tapio are free of charge. The services that carry a charge and the extent of the remuneration owed in each case varies according to the type of service and the information in the Marketplace.
- 5.2 All prices are quoted exclusive of statutory value added tax at the prevailing rate from time to time.
- 5.3 Prior to service performance, remuneration is required to be paid for services, the use of which calls for non-gratuitous activation consisting in the permanent performance of recurring services and/or in the ability to retrieve certain functionalities (e.g. Predictive Maintenance) or the costs of which are measured according to full use of a quota made available (such as storage capacity). Remuneration is obligatory irrespective of whether the customer actually utilizes the relevant services, functionalities or quotas.
- 5.4 Services not encompassed by clause 5.3, are billed after being rendered. Except as otherwise agreed, the remuneration owed is payable within 30 [thirty] days of the invoice date.

- 5.5 We reserve the right to commission a service provider to carry out the processing and settlement of payments.
- 5.6 The customer is entitled to assert a right of retention or set-off only if the rights or claims asserted by the customer have been finally adjudicated by a court of law or if they are uncontested.

## 6. USAGE RIGHTS

- 6.1 Upon arrangement of a tapio service, we will make the relevant tapio service available to the customer subject to the agreed availability, function and properties (clause 7).
- 6.2 Except as otherwise stipulated in these Terms and Conditions of Use or as otherwise agreed for the respective acquisition of tapio services (e.g. when placing orders in Marketplace), on full payment the customer is granted a simple, non-sublicensable and non-transferable right of use, confined to the customer's own internal business purposes, of the tapio services agreed from time to time ("**Service Usage Right**") as well as the data/information retrievable or transferred as a component of the tapio Service with special reference to business operations, systems or facilities of the customer ("**Service Data**"). The service usage right automatically ends on expiry of the term agreed for the relevant tapio service. The customer may use the service data received as a performance component for an unlimited period of time; clause 7.2 remains unaffected in this regard.
- 6.2.1 The service right of use may only be exercised by selected, duly qualified adult-age employees committed to confidentiality (employees or company representatives) of the customer ("**Authorized Service Users**"). A prerequisite for this is internal activation of the Authorized Service User pursuant to clause 4.3. To avoid any misunderstandings, it is clarified that Authorized Service Users do not receive an independent right of use from us.
- 6.2.2 If the tapio service agreed from time to time refers to certain machinery or systems (e.g. Predictive Maintenance), then the service usage right applies only to such machinery or systems used by the customer for itself and its affiliated companies as contemplated by Sections 15 ff. of the German Stock Corporation Act (AktG) ("**Affiliated Companies**") for processing own,

internal business transactions (“**Authorized Systems**”). Any use of tapio services for machinery, systems and/or software components of third parties (in particular, by registration of third-party machinery/systems in the Admin Portal) is expressly prohibited. The customer alone is responsible for ensuring that it disposes of the necessary rights regarding the Authorized Machinery and Systems in order to use the tapio services for these - no verification in this regard will be made by us.

- 6.3 If the use of the tapio service calls for registration of individual employees of the customer (e.g. via Mobile App for a tapio service), such employees may only log in as authorized service users via the customer's terminals using their true (and current) business contact data. If utilization takes place with private terminals of the Authorized Service Users, then the Customer alone is responsible for this, in particular for maintaining the confidentiality of data and information accessed via this and for the data as well as for the data protection-compliant design of the operational use of private terminals. The exercise of the service usage right via mobile apps calls for the corresponding mobile apps to be used in their currently available version from time to time. We reserve the right to block access to services for outdated versions of mobile apps.
- 6.4 If, within the scope of its tapio membership, the Customer receives additional data/information (e.g. information material) from us, from tapio partners or other tapio customers or has authorized access to such data/information (“**Tapio Data**”), the Customer may use it exclusively for its own internal company purposes.
- 6.5 The customer is only allowed to download, save, copy, duplicate, print or use content contained on tapio or accessible via tapio if the corresponding option is part of a service or is otherwise made available separately as a function (e.g. via a download link).
- 6.6 Without prior express authorization by us, the customer is prohibited from having the services and/or tapio contents (including service data and tapio data) used, used for third parties, offered or made accessible, published or distributed by persons other than the authorized service users. The confidentiality

obligations of the customer remain unaffected by this [clause 13].

- 6.7 All rights to and in respect of the tapio services are exclusively ours; clause 6.2.1 remains unaffected by this. It is clarified that no claims or rights of the customer are justified by the further or new development of services. This also applies if further or new developments are made using and evaluating content, information and data from the customer's domain (cf. clause 7).
- 6.8 All rights to content and regarding all objects of rights and content capable of protection remain with the original owner of the rights in question. If the customer is provided with software to exercise the service usage right, e.g. as embedded software), we or the respective rights holder(s) (e.g. tapio partner) remain the owners of all rights to the software. It is prohibited to process, rework, decompile, reverse engineer, disassemble or translate the software or to make any other attempt to convert it into source language (source code) unless the aforementioned acts are mandatorily permissible by law (Sections 69d, 69e of the [German] Act on Copyright and Related Rights [*Urheberrechtsgesetz - UrhG*]).
- 6.9 In supplementation of these Terms and Conditions of Use, further specific license terms may apply to the use of the Services, including open source license terms and third-party license terms to which the Customer is specifically referred (e.g. In product-specific terms and conditions). The Customer undertakes to comply with the relevant license provisions.

## **7. DATA SECURITY, DATA USE, DATA PROTECTION,**

- 7.1 The provision of services is largely based on data that is collected in the Customer's domain via operating machinery and systems or subsequently implemented additional components and relayed in tapio ("**raw data**"). tapio is based on a professionally protected cloud infrastructure that is regularly reviewed and certified according to usual market standards for IT security.
- 7.2 Except as explicitly otherwise agreed, the customer receives service data exclusively in the form of the displays and evaluations provided by the relevant service. The decision as to which raw data is collected, processed and stored for the

provision of the relevant service is within our own exclusive discretion. Unless explicitly provided as an element of the services agreed from time to time, the customer is not entitled to the collection, evaluation or possession of certain raw or service data.

- 7.3 We collect, duplicate, process and store raw and service data (referred to collectively as “**data use**”) primarily for the purpose of providing the tapio services. Any data use beyond this takes place only if described accordingly in the respective service description or product-specific terms and conditions and otherwise only after anonymization / pseudonymization of the relevant raw and service data, in particular for the purpose of improving the services and developing new products.
- 7.4 Accessibility to, or disclosure of, raw and service data to third parties concerning individual customers is made only
  - 7.4.1 to subcontractors possibly commissioned by us to perform tapio services;
  - 7.4.2 to tapio partners if this is necessary to provide the partner products offered via tapio;
  - 7.4.3 in the cases specified in clause 13.4.5.
- 7.5 Moreover, raw and service data is forwarded, made accessible and disclosed to third parties or published only in anonymized or pseudonymized form, typically in aggregation with other data, allowing no conclusions to be drawn from the data concerning individual customers.
- 7.6 To the extent that raw and service data allows conclusions to be drawn on secret, internal corporate matters of the customer, we undertake to treat such data confidentially in accordance with clause 13, with priority being assigned to the provisions of this clause 7 in the event of any disputes.
- 7.7 We and the customer undertake to comply with the applicable provisions under data protection law for the protection of personal data.
  - 7.7.1 Apart from the cases mentioned below, the provision of tapio services does not call for any collection and processing of personal data. The customer is responsible for this and takes appropriate technical and organizational measures to ensure

that we have no access to personal data (e.g. of operators of machinery).

7.7.2 As a matter of principle, personal data of employees, customers and authorized service users is collected, processed and stored only if this is necessary to establish and execute the customer's tapio membership as well as for the processing and settlement of orders placed for the provision of services. Details in this regard can be found in the data protection references on the relevant web page(s) or tapio apps.

7.7.3 The customer and we enter into an agreement to process data on behalf of others in accordance with a sample contract provided by us if the customer recognizes that access by us to personal data of employees of the customer or Authorized Service users cannot be ruled out despite the measures pursuant to clause 7.7.1, of which the customer must notify us without delay or if the service description or product-specific description provides that we process personal data on behalf of the customer.

## **8. SERVICE PROPERTIES AND AVAILABILITY**

8.1 The content and properties of the tapio service as well as the type and scope of the services to be provided by us in this connection are finally derived from the respective product description and the present Terms and Conditions of Use. Except as otherwise dealt with in the respective service description or these Terms and Conditions of Use, the following rules apply:

8.1.1 We take appropriate measures and security precautions to avoid harmful impacts of the tapio service on a customer's user environment and to ensure an adequate level of data security [clauses 7.1 and 7.2].

8.1.2 Information on the tapio services on websites, in applications (e.g. Mobile apps), in catalogs, general product descriptions, data sheets, plans, drawings, in particular information on availability, functionality, performance data, etc. is legally binding only if the product-specific terms and conditions explicitly refer to the tapio services or if some other explicit confirmation in writing by us exists.

- 8.1.3 Except as otherwise explicitly agreed in writing, the tapio services do not comprise customer-specific services such as data evaluations in specific, individual cases that extend beyond the standard functionalities of the service in question.
- 8.1.4 We have no influence on the properties of the data generated and collected in the customer's domain, in particular during operation of machinery and systems. Prior to automated evaluation of raw data, no separate analysis is made of data formats, content and extent as well as of the quality, completeness, reliability and/or correctness of the raw data.
- 8.1.5 The software and algorithms used to evaluate the raw data analyze the latter on the basis of certain methods that can be revised at any time. The data evaluations arising in the process and the results displayed to the customer are largely based on the configurations of the relevant machinery and systems and on the settings selected by the customer. The evaluation processes carried out on this basis, like any other scientific method, are subject to natural barriers and do not allow for any final and binding recommendations for action to be made. The tapio services are merely intended as support or an aid and are no substitute for independent analysis and/or a critical assessment by the customer and its Authorized Users as to whether and which organizational and technical measures are to be taken regarding the customer's deployment and operation of machinery and systems as well as its production work flows. In particular, no legal verification is carried out by us as to whether or not any measures planned by the customer on the basis of the tapio services are lawful, e.g. With regard to aspects regarding data protection or under labor law. The customer alone is responsible for deployment of the tapio services.
- 8.2 We and the tapio partners make constant efforts to improve the service. It may be necessary for services to be updated by new versions from time to time. As a rule, this occurs automatically without the customer's consent being obtained or the customer being specifically notified thereof. The customer's rights acquired to use the services shall remain unaffected.

- 8.3 Certain availabilities and service levels apply only if they are part of the relevant service description. In addition, we strive to keep interruptions in tapio's operations and services to a minimum with the level of professionalism that is customary in the market.
- 8.4 We are not responsible for the unavailability or malfunctions of tapio and of services that
- 8.4.1 are due to causes beyond our control (e.g. natural disasters, wars, terrorist attacks, riots, industrial disputes, government measures, power or equipment failures, including at the customer's site or between the customer's site and the data center used by tapio);
  - 8.4.2 result from the use of services, hardware or software not provided or expressly acknowledged by us, including, but not limited to, problems related to insufficient bandwidth or third-party software or services;
  - 8.4.3 were caused by the use of a tapio service by the customer after we had instructed the customer to change the use of the tapio service and the customer did not change the use as instructed;
  - 8.4.4 were caused by the unauthorized action (including incorrect entries) or omission of a necessary action by the customer or its employees, representatives, contractual partners or suppliers or by other persons who have obtained access to the tapio services or which are otherwise caused by non-compliance with appropriate security procedures by the customer;
  - 8.4.5 were caused by the customer's failure to comply with the required configurations or due to the use of tapio services that is incompatible with the features and functions of the tapio service (e.g. attempts to perform unsupported processes) or does not correspond to the guidance published by us for assistance.

## **9. SUPPORT**

- 9.1 In case of technical problems and questions concerning the use of tapio, the hotline service is available to the customer under the contact data supplied on the tapio website or otherwise made available to the customer at the times specified on the website.

- 9.2 To the extent that we offer special support for the respective tapio service, its availability and scope are listed in the relevant service description.
- 9.3 Except as explicitly otherwise agreed, support services are provided exclusively by remote communication or by remote data transmission.

## 10. CHANGES

- 10.1 We are entitled to amend these Terms and Conditions of Use, product-specific conditions and/or the system requirements applicable to the use of tapio and/or services at any time ("**Changes**"). In particular, this also includes technical and functional updates, to which we are not obliged, however.
- 10.2 We will notify the customer of any material changes in appropriate form and subject to reasonable advance notice. Material changes include, in particular, those that have a noticeable effect on the availability, functionality or quality of services or the contractual relationship.
- 10.3 If the change means a significant deterioration in the availability, functional scope or quality of services for the customer, then the latter is entitled to an extraordinary right of termination for good cause regarding the service concerned. The exercise of the extraordinary right of termination must be declared in writing and received by us within 15 (fifteen) working days after receipt of the information about the change from the customer.
- 10.4 Changes to these Terms and Conditions of Use or to Product-Specific Terms will take effect unless we receive a written objection from the Customer within 30 (thirty) days of receipt of the information about the change by the Customer (clause 19.4). In the event of an objection by the customer, we shall have an extraordinary right of termination with regard to all contractual relationships affected by the customer's refusal to accept the change. The customer will be informed of this consequence separately when the change(s) is/are announced.

## 11. RESPONSIBILITY AND DUTIES OF COOPERATION OF THE CUSTOMER

- 11.1 In supplementation of these Terms and Conditions of Use, of these Product-Specific Conditions and/or in the product description or in any other legally binding manner, the following duties and obligations are applicable.
- 11.2 The customer is responsible for ensuring that the system requirements applicable to the respective services are met in the customer's operating environment. In particular, the customer is responsible for
  - 11.2.1 the provision and maintenance of the machinery and systems compatible for the respective services and for equipping its authorized service users with suitable end devices for the use of services;
  - 11.2.2 ensuring the use of the latest versions of the mobile apps available for the services;
  - 11.2.3 an adequately efficient and uninterrupted Internet connection and the corresponding connection of its machinery and systems via which the services are to be provided;
  - 11.2.4 creating the necessary conditions for equipping older generation machines and systems with components to make them compatible for the provision of the services.
- 11.3 The customer alone is solely responsible for the legal and contractual use of the admin area. In particular, the customer shall ensure that tapio access is exclusively exercised by the customer administrator or its representatives (clause 2.6) and that the internal activations are carried out correctly. The customer shall keep a record of the service usage rights acquired by it and shall provide us with the information and allow us to inspect the relevant documents upon request.
- 11.4 The customer shall ensure that the services are exclusively used by Authorized Service Users (clause 6.2.1) and for Authorized Machines (clause 6.2.2).
- 11.5 The customer is solely responsible for the conduct of the customer administrator, its representatives and authorized service users as well as the affiliated companies for which the customer uses the services. In addition, the customer shall ensure that the customer administrator, its representatives and Authorized

Service Users as well as its affiliated companies for which the Customer uses the Services are aware of and comply with these Terms and Conditions of Use. In doing so, the customer shall refer in particular to the prohibition of usage of private end devices and the indication of private contact data as well as the requirement to provide true data (clause 6.3). The conduct of Authorized Service Users (including all acts of use, declarations and omissions) and its affiliates must always be attributable to the Customer.

- 11.6 In the event of resignation of the customer administrator, its representatives and/or Authorized Service Users, the customer shall take all necessary measures to ensure an uninterrupted use of tapio and the Services in contractual conformity. In particular, this includes the immediate change of passwords known to the aforementioned group of persons and an immediate logout of the former Authorized Service Users via the Admin Portal.
- 11.7 The customer shall take the necessary measures from time to time for the protection and security of any service data provided by us and other contractual items (e.g. access data, passwords, etc.) provided to it or the Authorized Service Users. This includes but is not limited to adequate protection against access by unauthorized persons or misuse activities, in particular password procedures/password protection, automatic blocking, virus scanners and firewalls as well as the implementation of other necessary technical and organizational protective measures.
- 11.8 If unauthorized access, unauthorized use, unauthorized copying, unauthorized forwarding or other unauthorized actions in connection with the Services occur, then the Customer shall notify us immediately in writing and shall take all necessary measures without delay and assume all costs to remedy the respective violation.
- 11.9 The customer is solely responsible for the contractually and legally compliant use of the services made available to it within its domain and shall ensure that the relevant requirements for this are met. In particular, the customer is responsible for ensuring that the data protection requirements pursuant to clause 7.7 are fulfilled and that no rights of third parties in

particular to machines and systems) or legal provisions are violated.

- 11.10 The customer is solely responsible for the interpretation and use of the data/information that is displayed or made available to it as part of the tapio services, as well as for the decisions made on this basis and the (economic) consequences thereof. If the tapio Services and functions thereof display recommendations for machine settings to the customer, then the customer shall remain responsible for the operation, monitoring and maintenance of its machines and systems. It is within the sole and dutiful discretion of the customer to examine the results of the tapio services according to actual circumstances as to whether recommendations should be implemented in individual cases and which measures the customer should take or refrain from taking on this basis. This duty of inspection also applies in the event that the tapio services make automatic adjustments to the machine settings and configurations, which the customer can overwrite or modify at any time.
- 11.11 The customer is solely responsible for data backups, unless the storage of data is the subject of the agreed fee-based tapio Services.

## **12. BREACH OF DUTY BY THE CUSTOMER**

- 12.1 In the event of a material breach of contract for which - in particular in the event of breaches of the service usage right (clause 6), a violation of its duties of cooperation (clause 11) or duties relating to data (clause 9), a breach of confidentiality (clause 13) - delay in payment by the customer, we shall be entitled to discontinue the performance of services for the duration of the breach or violation and/or to block the customer's tapio access. Further claims and rights of us, in particular to termination and damages, for whatever legal reason, shall remain unaffected by this.
- 12.2 The customer shall hold us harmless from all claims, receivables, expenses, costs and loss, damage or injury caused by acts and omissions of the customer, its employees, vicarious agents and/or affiliated companies in connection with the exercise or non-exercise of the customer's duties of cooperation (clause 11), the service usage right being exceeded (clause 6) or the

unauthorized or unlawful use of tapio, the services or of service data. The customer shall inform us immediately in writing of any receivables, claims or fines asserted or threatened and - at our request - shall defend us against any such assertion.

### **13. CONFIDENTIALITY**

- 13.1 Each of the contracting parties undertakes to treat the Confidential Information of the respective other contracting party in strict confidence and to exercise the same degree of care as with regard to its own operating and business secrets of similar importance, but at least to take appropriate technical and organizational measures, including sufficient protection against access by unauthorized persons or misuse. The powers conferred on us by clause 7 shall remain unaffected by the above.
- 13.2 Confidential information comprises all trade and business secrets of the contracting partners as well as all embodied or verbal information and data such as technical or business data (in particular raw data and service data), evaluations based on such data, development plans, plans for product development and product design, information on hardware, databases, software used or created, source codes and algorithms as well as documents or knowledge which the contracting parties exchange in connection with tapio use by the customer and which - to the extent embodied in writing or any other form - are designated as "confidential" or by a similar notation or which are deemed to be confidential in terms of their nature.
- 13.3 If unauthorized access, unauthorized use, unauthorized copying, unauthorized forwarding or other unauthorized action with regard to the Confidential Information of the providing contractual partner takes place within the area of responsibility of the receiving contractual partner or becomes known to the receiving contractual partner, the receiving contractual partner shall immediately notify the providing contractual partner in text form and shall immediately take all necessary measures and assume all costs to remedy the relevant violation.
- 13.4 The confidentiality obligation does not apply to Confidential Information that

- 13.4.1 was already lawfully known to the receiving contractual partner without any obligation to maintain confidentiality before the data was provided;
  - 13.4.2 is or becomes publicly accessible without the receiving contractual partner being responsible for this, provided that Confidential Information is not already deemed to be publicly accessible because only parts thereof already are or will become publicly accessible;
  - 13.4.3 is lawfully communicated or provided to the receiving contractual partner by a third party without any obligation to maintain secrecy, provided that the third party - to the knowledge of the receiving contractual partner - is not in breach of any obligation of its own to maintain secrecy when handing over the information;
  - 13.4.4 was developed by the receiving contracting party independently and without recourse to Confidential Information or according to the exceptions dealt with in 13.4.1 to 13.4.3 or 13.4.6;
  - 13.4.5 is to be disclosed on the basis of a binding official or judicial order or mandatory legal regulations, provided that the other contracting party has been informed in writing of the disclosure; or
  - 13.4.6 has explicitly been expressly released by the assigning contractual partner.
- 13.5 The contracting party invoking an exception must prove that the requirements have been met.

#### **14. WARRANTY, RELEASE**

- 14.1 We warrant that the tapio services made available to the customer in return for payment have the agreed quality from time to time (clause 8). We assume no guarantee for the safe, uninterrupted or error-free operation of tapio and/or tapio services. Except as explicitly otherwise stated in the service description, we accept no liability for the suitability of the tapio functions for a specific purpose.
- 14.2 In the event of any defects, we shall take the necessary measures to remedy the defects in question within a reasonable period. We shall also be liable only for such defects that already

existed when a tapio service was legally agreed only if we happen to be at fault.

- 14.3 If a third party asserts claims against the customer which are based on the fact that the tapio services constitute an infringement of copyright or industrial property rights of the third party for which we are responsible, we shall hold the customer harmless from all legally enforceable claims for damages and costs, provided that we were immediately notified in writing of the assertion of such a claim and if information is received and appropriate support is provided. Furthermore, it is a prerequisite that we are granted the authority to defend or regulate the asserted claim.
- 14.4 Warranty and indemnity claims are excluded
  - 14.4.1 for tapio services made available to the customer free of charge, except in the case of fraudulent concealment of a defect by us or our vicarious agents;
  - 14.4.2 in the cases referred to in clause 8.4, unless the customer can prove that the defect/infringement of rights would have occurred even without the circumstances referred to therein;
  - 14.4.3 insofar as the breach of the customer's duty to cooperate or the omission of the immediate and detailed notification of a defect was [co-]responsible for any damage or defect and can [no longer] be remedied thereby; the conditions specified in clause 14.3 shall remain unaffected by this.

## **15. LIABILITY**

- 15.1 We shall be liable without limitation in cases of personal injury, fraudulent and all cases of damage, loss or injury caused with intent or gross negligence by the legal representatives or vicarious agents of tapio.
- 15.2 In all other respects, we shall only be liable for any breach of a material contractual obligation for which we are responsible. Material contractual obligations are such obligations whose fulfillment enables proper execution of tapio use in the first place or on whose compliance the customer may generally rely. Liability for breach of such a material contractual obligation is limited to the amount of the typically foreseeable damage at the time of signing the agreement. The upper limit for typically

foreseeable damage is the annual remuneration owed for the tapio service concerned.

- 15.3 In all other respects, liability on our part for damage caused by negligence, irrespective of the legal basis, is excluded. This also applies to our legal representatives, employees, vicarious agents and subcontractors to whom a transfer of duties took place.
- 15.4 The aforementioned limitations of liability shall not apply in the event that we assume an express warranty or in the event of liability under the Product Liability Act.
- 15.5 Claims for damages against us and our legal representatives, employees, vicarious agents and subcontractors shall generally become statute-barred one year after they have arisen. Exceptions from this rule are the cases specified in clause 15.1.

## **16. CONTRACTUAL DURATION, TERMINATION**

- 16.1 The user relationship established with the registration for tapio membership is entered into for an indefinite term.
- 16.2 Subject to the following provisions, both contracting parties may terminate the tapio membership at any time by giving 30 (thirty) working days' notice to the end of the respective month.
  - 16.2.1 The services used free of charge by the customer at the time of termination shall automatically end with the termination of tapio membership.
  - 16.2.2 In the event that one or more contracts for paid services exist, the tapio membership can be terminated no earlier than at the end of the last minimum term of a service or at the time of the possible termination option for the service in question. This shall also apply if a service relationship still exists with one or more tapio partner(s) concerning partner products.
- 16.3 The possibility for us or the customer to terminate the contract with immediate effect for good cause shall remain unaffected. Good cause shall apply if fact exist which, taking account of all circumstances and weighing the interests of both parties, make the continuation of tapio membership or of a tapio service

unreasonable or unacceptable for the terminating contractual partner. This is the case in particular

- 16.3.1 in the event of a breach of a material contractual obligation, if the breach thereof was not remedied within a reasonable period in spite of a reprimand in writing; no reprimand or warning is necessary if the basis of trust for the further performance of the contract is already impaired by the first breach of duty to such an extent that it cannot be restored (such as in the case of intentional or grossly negligent breach of trust by the customer of clause 6);
- 16.3.2 if the customer ceases or threatens to cease business operations, if insolvency proceedings are initiated or foreclosure proceedings are filed against the customer due to insolvency;
- 16.3.3 in cases of force majeure lasting longer than 2 (two) months.
- 16.4 In the event of extraordinary termination by us, for which the customer is responsible, we are entitled to an amount of 75 % (seventy-five percent) of the remuneration which would have been payable by the customer for the use of the tapio services up to their original residual term (calculated to the earliest possible date of ordinary termination). This shall only apply if the customer cannot prove that a lower level of loss or damage was caused.
- 16.5 If we are entitled to a right of rescission or termination according to these Terms and Conditions of Use, this shall not affect the remaining statutory rights of termination or rescission as well as all other contractual or statutory claims for damages on our part, in particular due to delay in payment by the customer.
- 16.6 Ordinary notices of termination are declared to be effective by canceling the tapio registration if this function is available on tapio and otherwise by written declaration submitted by the customer. Extraordinary notices of termination must always be in writing to be legally valid.

## **17. TERMINATION**

- 17.1 Upon termination of tapio membership, the customer's access to tapio as well as its right to procure services shall come to an end. All items made available to the customer for a limited

period of time (e.g. hardware or software) shall be returned to us by the customer within 20 (twenty) days after termination of the tapio membership at the latest, without a request being necessary in this regard and/or shall be deleted along with any copies/duplicates still in the customer's possession.

- 17.2 Within 24 (twenty-four) months after termination of tapio membership, we will delete all customer-specific data, unless we are legally obliged to store such data for a longer period of time. Only to the extent that the tapio services agreed and fully paid for included the storage of data on behalf of the customer can a surrender of the data collected hereunder be requested in accordance with the agreed product description and/or the Product-specific Conditions.

## **18. PUBLICATIONS**

The confidentiality obligations do not limit our right to name the customer as a tapio user (e.g. On websites, at trade fairs, during presentations, etc.). The customer hereby expressly agrees to the use of its company name and company symbols (above all, trademarks).

## **19. DECLARATIONS, NOTIFICATIONS**

- 19.1 If the text form is intended for declarations or notifications under these Terms and Conditions of Use, these can be declared by email or via the input fields expressly provided to this end on the tapio platform.
- 19.2 If written form is exceptionally provided for declarations or communications under these Terms and Conditions of Use, such declarations or communications must be signed by an authorized representative of the declaring contractual partner and sent to the other contractual partner by post or facsimile.
- 19.3 Special notifications and declarations to the customer are to be addressed to the contact data given at the tapio registration of the customer or alternatively to the customer's business address. Notifications and declarations concerning all or a number of customers can also be published on tapio as customer information.
- 19.4 Declarations to tapio are to be addressed to:

tapio GmbH  
Karl-Berner-Straße 4  
72285 Pfalzgrafeweiler  
Germany  
administration@tapio.one

## 20. MISCELLANEOUS

- 20.1 None of the contracting parties is entitled to assign any rights or claims arising from the contractual relationship without the prior written consent of the other contracting party. Excluded from this is the assignment of rights or claims from us to tapio partners in connection with the partner products supplied to the customer by the tapio partners.
- 20.2 These Terms and Conditions of Use and the interpretation thereof are subject to the laws of the Federal Republic of Germany. Application of the UN Convention on Contracts for the International Sale of Goods (CISG) is hereby excluded. The exclusive place of jurisdiction for all disputes concerning rights and obligations under these Terms and Conditions of Use, including their effectiveness, is our registered place of business.
- 20.3 Should any specific provisions of these Terms and Conditions of Use be or become wholly or partially invalid or unenforceable, this shall not affect the validity of the remaining provisions of these Terms and Conditions of Use. In such a case, the contracting parties undertake to replace the invalid or unenforceable provision without delay with a provision that best approximates the legal and commercial purpose of the invalid or unenforceable provision. Until such time, such a provision is deemed to have been agreed. The foregoing shall apply *mutatis mutandis* to the closure of any contractual gaps.
- 20.4 The parties confirm having requested that these Terms and Conditions of Use and all notices or other communications relating thereto be drawn-up in the English language only. *Les parties aux présentes confirment avoir requis que ces termes et conditions et autres communications s'y rapportant soient rédigés en langue anglaise seulement.*