

Mategra GmbH – Reseller Terms and Conditions

Mategra GmbH
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Austria

These Reseller Terms and conditions apply in addition to the General Terms and Conditions (GTC) of Mategra GmbH (Mategra) and govern the sale of Mategra's Software by the Reseller as well as all related interactions between the Reseller and Mategra.

1. Appointment, Authority & Scope

1.1. Contractual Relationship

The contractual relationship regarding the use of Testiny is exclusively between Mategra and the End Customer. The Reseller merely acts as an intermediary.

1.2. Independent Contractor; No Authority to Bind

The Reseller acts as an independent contractor. The Reseller has no authority to make representations, warranties, or commitments on behalf of the Mategra or to bind Mategra in any way.

1.3. No Exclusivity

The Reseller does not receive any exclusive rights.

1.4. Limited Resale Right

Mategra grants the Reseller a non-exclusive, non-transferable right to offer and deliver the product Testiny exclusively to the End Customer named in the relevant offer. No continuing reseller status is granted. Each resale requires a separate written approval by the Mategra.

1.5. Termination of Resale Right

Upon delivery to the End Customer, the Reseller's right hereby granted shall expire.

1.6. Limitation of Resale Activities

The Reseller shall not modify, bundle, or repackage the Software in a way that creates the impression of a different product, nor shall it offer the Software together with other products under misleading conditions without prior approval from Mategra.

1.7. Customer Allocation / No Future Entitlements

Any subsequent contract concluded directly between Mategra and the End Customer shall not create any entitlement, commission, or right for the Reseller, unless expressly agreed otherwise in writing.

1.8. Assignment prohibition

The Reseller shall not assign or transfer rights or obligations under these Reseller Terms without prior written consent of Mategra.

2. Flow-Down of Terms & Contract Formation

2.1. Application of Mategra's General Terms and Conditions

The Reseller undertakes to ensure that Mategra's General Terms and Conditions (GTCs) are presented to the End Customer prior to conclusion of contract and that the End Customer expressly acknowledges their validity and shall provide Mategra with written or electronic evidence of such acceptance upon request.

2.2. Liability of Reseller for Transmission of Mategra's General Terms and Conditions

If the Reseller fails to properly transmit and ensure the validity of Mategra's GTCs towards the End Customer, the Reseller shall be fully liable for any resulting damages, claims by third parties, or legal disadvantages suffered by the Mategra.

2.3. Binding Acceptance

The Reseller shall be deemed to have bindingly accepted these Reseller Terms as soon as any offer of Mategra has been forwarded or transmitted to the End Customer in whole or in substantial part, or has been made the basis of the Reseller's own offer — irrespective of whether an express declaration of acceptance has been made.

2.4. Right to Suspend or Withdraw

Mategra shall be entitled to suspend the provision of services or withdraw from the contract if the validity of the GTCs has not been verifiably ensured towards the End Customer.

3. Commercial Terms & Payment

3.1. Discounts

Discounts shown on Mategra's or the Testiny website or within the Software apply only to self-service purchases completed directly in the app using the offered payment methods. They do not apply to reseller transactions unless expressly agreed in writing by Mategra. No entitlement to any discount exists; discounts are discretionary and may be modified or withdrawn until payment is completed.

3.2. Payment

The Reseller remains fully liable for timely payment of all amounts invoiced by Mategra, regardless of whether the End Customer has paid the Reseller. In the event of default, Mategra reserves the right to withdraw from the offer or withhold the service.

3.3. Taxes and Withholding

The Reseller is solely responsible for compliance with applicable tax and withholding obligations in its jurisdiction. Mategra's invoices shall be payable in full, free of deduction, unless mandatory statutory withholding applies.

3.4. No Set-Off; No Right of Retention

The Reseller shall not be entitled to set off any claims against Mategra's claims or to assert any right of retention, except where such set-off or retention is based on the Reseller's uncontested or finally adjudicated claims.

4. Compliance, Brand Use & Data Protection

4.1. Use of Trademarks and Marks

The Reseller is expressly prohibited from using trademarks, logos, or other protected marks of Testiny or Mategra without the Mategra's prior written consent.

4.2. Compliance with Marketing & Branding

All marketing and promotional materials used by the Reseller in connection with the Software must be pre-approved by Mategra in writing unless using official materials provided by Mategra without modification. The Reseller shall not make misleading statements or representations regarding the Software or Mategra.

4.3. Confidentiality

These confidentiality obligations are in addition to, and not in limitation of, those set forth in the GTCs. The Reseller shall treat all commercial, technical, and business information received from Mategra, including but not limited to pricing, discounts, and product roadmaps, as strictly confidential. Disclosure is permitted only to the extent necessary for resale activities and only to prospective End Customers under confidentiality obligations.

4.4. Compliance with Laws

The Reseller undertakes to comply with all applicable laws, including export control regulations, when marketing or reselling the Software.

4.5. Territorial / Market Restrictions

The Reseller shall not market, distribute, or resell the Software in territories subject to export restrictions, embargoes, or other trade sanctions. The Reseller shall indemnify Mategra for any claims or liabilities arising from violations of such restrictions.

4.6. Data Protection

The Reseller is solely responsible for ensuring that any personal data it processes or transfers in the course of resale activities is handled in compliance with applicable data protection law, including the GDPR.

4.7. Audit / Verification Right

Mategra may, upon reasonable notice, request documentation or confirmation from the Reseller to verify compliance with these Reseller Terms. Requested documentation shall be provided without undue delay and, in any event, within five (5) business days. Costs are borne by the Reseller if non-compliance is found.

5. Liability, Indemnity & Remedies

5.1. Scope of Liability and Warranty

Liability, warranty, and support obligations apply exclusively between Mategra and the End Customer. The Reseller shall not present itself as the manufacturer or provider, and no warranty obligations shall emanate from the Reseller.

5.2. Indemnification

The Reseller shall indemnify and hold harmless Mategra from and against any claims, damages, liabilities, costs, or expenses (including reasonable legal fees) arising out of or in connection with (i) the Reseller's breach of these Reseller Terms or applicable law, or (ii) any representations, commitments, or assurances made by the Reseller to End Customers or third parties that go beyond or deviate from Mategra's GTCs or official documentation.

5.3. Breach and Contractual Penalty

If the Reseller violates any provision of Mategra's GTCs or these Reseller Terms — in particular with respect to payment default, failure to transmit GTCs, customer allocation, confidentiality, trademark use, or unauthorized disclosure of the Software — the Reseller shall pay a contractual penalty equal to the value of the underlying invoice or offer, but in any event not less than EUR 5,000 (for Resellers domiciled in the European Union and carrying out resale activities within the EU) or USD 6,500 (for all other Resellers) per violation event. Mategra's right to claim further damages remains unaffected. In the event of a continuing infringement, each calendar day shall be deemed a separate infringement. The contractual penalty shall be subject to judicial moderation to the extent required by mandatory applicable law.

5.4. Termination for Cause

Mategra may terminate the Reseller's right to act under these Reseller Terms with immediate effect in the event of a material breach by the Reseller, without prejudice to Mategra's right to claim damages.

5.5. Force Majeure

For the avoidance of doubt, the force majeure provisions in the GTCs apply equally to reseller transactions.

6. General Provisions, Precedence & Governing Law

6.1. Precedence

In the event of conflict between these Reseller Terms and Mategra's GTCs, the Reseller Terms shall prevail for all reseller activities.

6.2. Applicable Law

The applicable law is Austrian law, even if the order is implemented abroad. Insofar as nothing else is agreed on, only the legal provisions regarding business-to-business transactions according to Austrian law shall apply. Austrian Law shall apply to the exclusion of its conflict of law rules. The application of the United Nations Convention on Contracts for the International Sale of Goods shall in any case be excluded.

6.3. Place of Performance

Unless otherwise expressly agreed, the place of performance for all obligations arising from this Agreement shall be the registered office of Mategra. This also applies in particular to the provision of services, support, and payment obligations of the Customer.

6.4. Dispute Resolution and Arbitration

All disputes or claims arising out of or in connection with this Agreement, including disputes relating to its validity, breach, termination or nullity ("Disputes"), shall be negotiated by the Parties in good faith to reach an amicable settlement. If an amicable settlement cannot be achieved within 20 (twenty) working days after the occurrence of the Dispute, such Disputes shall be finally settled under the Rules of Arbitration (Vienna Rules) of the Vienna International Arbitral Centre (VIAC). The arbitral tribunal shall consist of three arbitrators. The seat of arbitration shall be Vienna, Austria. The language of the proceedings shall be German. Austrian substantive law shall apply. Notwithstanding the foregoing, Mategra shall also be entitled to bring claims against the Customer at the Customer's general place of jurisdiction in a court of law.

6.5. Salvatory Clause

Should one or more provisions of the present Terms and Conditions be or become invalid or unenforceable in whole or in part, the validity of the remaining provisions shall not be affected thereby. The invalid or unenforceable provision shall be replaced by a valid provision that comes as close as possible to the economic purpose of the invalid or unenforceable clause.

6.6. Survival

The provisions regarding Breach and Contractual Penalty, Confidentiality, Compliance with Laws, Territorial / Market Restrictions, Governing Law & Jurisdiction, Force Majeure, Precedence, Indemnification, Data Protection, Audit / Verification Right, Taxes and Withholding, No Set-Off; No Right of Retention, Independent Contractor; No Authority to Bind, Assignment Prohibition, the Salvatory Clause and this Survival Clause shall survive expiration or termination of these Reseller Terms.