

General Terms and Conditions

Mategra GmbH
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Austria

BEFORE USING THIS SOFTWARE READ THE FOLLOWING TERMS AND CONDITIONS CAREFULLY. BY DOWNLOADING, INSTALLING, ACCESSING OR USING OUR SOFTWARE AND OUR SERVICES OR BY CLICKING ON/CHECKING THE “I AGREE” BUTTON, YOU ACKNOWLEDGE AND AGREE THAT YOU:

1. HAVE READ ALL THE TERMS AND CONDITIONS CONTAINED IN THIS AGREEMENT
2. UNDERSTAND ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT
3. ACCEPT AND AGREE TO BE LEGALLY BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT.

DO NOT DOWNLOAD, INSTALL, REGISTER, ACCESS, OR USE OUR SERVICE OR SOFTWARE IF YOU DO NOT AGREE WITH THE FOLLOWING TERMS AND CONDITIONS.

If you are entering into this agreement on behalf of a company or other legal entity, you represent that you are an employee or agent of such company or other legal entity and you have the authority to enter into this agreement on behalf of such company or other legal entity.

1. General

- 1.1. This agreement is entered by Mategra GmbH (“Mategra”) and you (“The Customer”). Mategra means Mategra GmbH, Fasanstraße 25/14, 8052 Graz, Austria.
- 1.2. Mategra customers are solely business owners and/or entrepreneurs as specified in §1 (2) KSchG (Austrian Consumer Protection Act).
- 1.3. Standard business conditions and/or general terms and conditions of the Customer do not apply, regardless of whether or not Mategra has expressly objected to them in a particular case. Any terms and conditions of the customer will only apply if Mategra expressly confirms this in writing.
- 1.4. Individual agreements have to be accomplished in writing and also have to be signed by all parties. Any informal statements and declarations by Mategra, also including ones by email, are not binding.
- 1.5. These Terms of Service can be unilaterally changed by Mategra at any time. The customer gets notified of any changes via email at least two months before the changes will take effect. Within four weeks from the date the email was sent, the customer will be entitled to object to the changes in writing. If the customer has not objected to the changes within a four-week period or if the customer has agreed to the changes, the changes are deemed accepted and binding. These legal consequences (including the option to object) will be highlighted separately in the notification mail. In case of an objection, Mategra is entitled to terminate the contracts concluded with the customer within a one-month notice period under the old Terms of Service for good cause. For the case, Mategra does not terminate any contracts in the event of an objection by the customer, the old Terms of Service shall continue to apply on the affected contracts.

2. Scope of Services and Downtime

- 2.1. Mategra provides the customer with “Testiny”, a service platform, including but not limited to a cloud system for software testing, test management, test documentation, infrastructure services, and the possibility to store data, as software-as-a-service (“SaaS”; each a “Service” and together the “Services”) in the respective current app version (hereinafter referred to as “Software”) to the extent licensed under this agreement.
- 2.2. Mategra provides its Software and its modules to Customers on an online platform or to be downloaded via the internet for the duration of the agreement on the terms and conditions set out in these terms and conditions.
- 2.3. Mategra reserves the right to perform ongoing development and modify the Software as well as specifications of the Software at any time (e.g. applying newer technologies, toolstack changes, etc.). Such adjustments, changes and updates of the Software that help to improve the software, or avoid, or maintain dysfunctions of the Software, may lead to temporary service degradations or suspensions. Mategra will try to limit downtime of the service or restrictions of accessibility to a minimum and will try to do regular maintenance works during the weekend or at times where a minimal number of users is normally active. In case of planned maintenance, which exceeds two hours, Mategra will inform the customer in a timely manner about upcoming maintenance works. The customer benefits from such maintenance and improvements and thus acknowledges potential downtimes.
- 2.4. The customer has the option of using the Software free of charge during the initial, clearly marked beta phase. At least one month before the end of the beta phase, the customer will get informed of the date the beta phase will end. The day after the end of the beta phase, the customer will fall under the terms of the first day of the “trial phase”, as outlined in these Terms of Service.
- 2.5. The customer has the option of using the Software free of charge in a trial period for 14 days after sign-up. Before the end of the trial period, Mategra will reach out to the customer with the offer to convert the trial into a paid subscription plan to continue using the Software. When the customer does not take this offer, the customer’s account will get handled according to the conditions lined out in “Term and Termination”, especially [point 7.6](#).
- 2.6. Mategra is solely responsible for providing their own services. In case of any Software malfunctions caused by a third party intervention or the customer himself, the customer may not raise any claims against Mategra. The Customer is aware that the Service relies on a working internet infrastructure. Any end devices and the internet connection are not covered by the service of Mategra.

3. Customer’s Obligations

- 3.1. The software shall only be used by the customer for its intended purpose and shall not be misused in any manner, especially like storing or distributing unlawful content, copyright protected material etc. No software system, data or any other technical system must be used by the customer which could impair the software or other systems operated by Mategra.
- 3.2. The customer compels to use the software only according to these Terms and Conditions or according to any potential individual agreements. All users of the customer, like employees or other third parties also have to obey these Terms and Conditions.
- 3.3. In case of a violation of these Terms and Conditions (and the resulting obligations) by the customer or one of its users, the customer is liable to Mategra for all damages resulting from the violation, especially in case of any illegal usage of the software or the services offered by Mategra.
- 3.4. The Customer shall not cause, permit, or attempt the change, disassembly, decompilation, or the reverse engineering of the Software, unless (and only to the extent that) applicable law expressly and compulsorily permits it, notwithstanding this limitation. The Customer agrees not to attempt to bypass any technological protection measures in or relating to the Software or Services or separate components of the Software or Services for use on different devices.
- 3.5. Required IT hardware and infrastructure to use the software has to be maintained by the customer at its own risk and expense.
- 3.6. The customer has to secure its login details, shall prevent unauthorized access to or use of the software, and has to utilize appropriate technical measures to secure its system and carry out regular backups.
- 3.7. Mategra reserves the right to disable the customers access to the software in case of a violation of these Terms and Conditions or the violation of any other individual agreements, especially if the customer is misusing the software as lined out in 3.3 or defaults payment. Such a measure does not affect the customers obligations to continue the payments for the contractual usage fees. Mategra also reserves the rights to charge the customer for any costs which arise in relation with the deactivation of the customers account and the reasons which led to the deactivation of the customers account.

4. Rights of use

- 4.1. Subject to the Customer's compliance with the terms and conditions of this agreement, Mategra grants Customer a limited, revocable, non-exclusive, non-transferable, non-sublicensable license to install or remotely access the software (e.g. on a SaaS basis). All rights to the software belong to Mategra. The customer may use the Software in any country in which the Software may be lawfully used.
- 4.2. The customer is further not permitted to reproduce, sell, rent or lend the software or parts of it (e.g., its documentation), in any kind, or to grant sublicenses.
- 4.3. The customer does not obtain any copyright, any trademark, patent, or other intellectual property rights.
- 4.4. Providing subcontractors of the customer temporary access to the software in accordance with these Terms and Conditions is allowed.
- 4.5. Providing third parties permanent access to the software is only allowed after a written approval by Mategra.
- 4.6. No further rights to the software are granted to the customer, unless agreed in an individual written agreement.
- 4.7. In case of third-party software provided to the customer, the manufacturers respective license terms shall take precedence over the provisions of this section. For any third-party software used within or by software and services provided by Mategra, we refer to [section 12](#).

5. Warranty, Limitation of Liability and Malfunctions

- 5.1. The software is provided to the customer by Mategra with reasonable best efforts. Mategra will perform reasonable economical efforts to ensure that the availability of the software is as uninterrupted as possible, but Mategra takes no warranty or liability that the software is permanently available and that it is free from errors and bugs. The customer explicitly acknowledges the aforementioned and that it is impossible to completely exclude and eliminate all errors and bugs from the software. For individual cases where the liability cannot be effectively excluded, improvement shall take precedence over any price reduction or a termination of the subscription/contract.
- 5.2. Mategra shall not be liable to the customer or third parties for any kind of direct or indirect damage caused by malfunctions or for damage to the customer's end devices. Any compensation for resulting damage such as loss of earnings or lost profits is fully excluded, as well as any liability for damages to the customer due to any kind of delays. Mategra is furthermore not liable in any kind for any loss of savings or for damages arising from third-party claims.
- 5.3. Mategra is only liable in the event of malice and gross negligence. Furthermore, the liability of Mategra for each damage causing event, even in case of multiple damaged parties, is limited to a total amount of EUR 1.000,- . For the case the overall damage is higher than the aforementioned amount, claims for damages by individual damaged parties get reduced in proportion.
- 5.4. Mategra also does not assume any kind of liability for any data loss or other impairments which can arise, especially due to impairments of customer's internet connection during synchronization processes.
- 5.5. Mategra does not assume any liability for any kind of damages and defects that occur due to improper usage, insufficient system requirements, modified system settings, modified operating system components, interfaces and parameters, unsuitable organizational measures or application errors, or any disruptions in any public communication networks.
- 5.6. In case of the unlikely event of any malfunction or service disruption, the customer will inform Mategra immediately, if applicable, with a comprehensible description of the error, to assist Mategra in identifying the underlying issue. The customer agrees to assist Mategra free of charge to amend any errors. Mategra reserves the right to prioritize and refuse any kind of bug fix, feature, system improvement, etc. at its own discretion. The correction of any errors, service disruptions or malfunctions requires in any case that the customer has fully met its payment obligations.
- 5.7. High Risk Usage Prohibited: The software may not be used in a hazardous environment, for military or nuclear-engineering purposes or other (software) applications that require fail-safe (fault-tolerant) performance or in any other application where failure of the Software could directly result in death, injury, serious property damage or environmental damage without the express prior written consent of Mategra.
- 5.8. As far as and as long as obligations due to force majeure, such as war, terrorism, natural disasters, fire, strike, lockout, embargo, sovereign intervention, epidemics or pandemics, failure of power supply, failure of means of transport, failure of telecommunication networks or data lines, changes in law affecting the Software after conclusion of the contract or other unavailability of the software cannot be fulfilled in due time or in due form, this shall not constitute a breach of contract and the customer shall not have any claims against Mategra resulting therefrom.

6. Data protection and Confidentiality

- 6.1. Mategra processes and uses customer data in accordance with the applicable (data protection) law(s). Further information is available under the Mategra privacy policy: <https://www.testiny.io/privacy-policy>
- 6.2. For the case Mategra processes personal data controlled by customer and in the absence of an individual agreement, the following data processing agreement applies: <https://www.testiny.io/data-processing-agreement>
- 6.3. Mategra is merely a data processor, the customer, as the user of the software, is also responsible for data protection and is in charge of compliance with the provisions of the General Data Protection Regulation – GDPR and the Austrian Data Protection Act (Datenschutzgesetz). When processing personal data within the software (including entering, storing, transferring, etc. personal data), the customer ensures to be entitled to do so in accordance with the applicable data protection regulations.
- 6.4. Mategra and the customer mutually agree to treat all business and trade secrets of the other party as confidential, whether they are obtained in connection with this contract, its execution as such or in any other manner and to prevent disclosure of the software or unauthorized access to the software by a third party. Confidential Information does not include any information that is already generally known, or was already known to the recipient beforehand without an obligation to secrecy, or was communicated or provided to the recipient by a third party without an obligation to secrecy, or was independently developed by the recipient, or has to be disclosed due to a legally binding official or judicial decision. The provisions of this section shall continue for an unlimited period of time after the end of the contractual relationship for any reason.
- 6.5. If Mategra utilizes subcontractors for the fulfillment of its services and this contract, these subcontractors are not considered as third parties as long as they are subject to an equivalent confidentiality agreement.

7. Term and Termination

- 7.1. This agreement takes effect upon the customer's use of any portion of the software or services offered by Mategra, runs for an indefinite time and will remain in effect until terminated by one of the parties.
- 7.2. The customer as well as Mategra can terminate the contract at the end of every subscription period (12 months in case of a yearly subscription plan, one month in case of a monthly subscription plan) by giving a 30 days' notice to the end of each month.
- 7.3. The Termination can be issued in writing by an authorized person or via the Mategra software system ("Testiny") through a user account with administrative privileges granted by the customer.
- 7.4. The rights for each party to terminate this agreement for good cause remain unaffected. A good cause for Mategra for extraordinary termination of this agreement shall include, but is not limited to the following:
 - Any kind of serious breach of the obligations by the customer arising from this agreement;
 - The customer defaults on payment during 30 days; granting any kind of grace period is not required;
 - The customer provides false or incomplete information;
 - Any kind of attempt of a denial-of-service attack, or any kind attempt to hack or break whatever security mechanism on any of the services by the customer;
 - Any kind of reasonable suspicion that the software or service is being misused;
- 7.5. In the event of the termination of this agreement, any rights to use the software or services offered by Mategra shall expire immediately and the customer shall cease to use any software or services offered by Mategra.
- 7.6. The day after the subscription or the trial period ends, the customer's account will be deactivated and the customer will no longer have access to its account. 30 days after the expiration of the contract and the subscription, Mategra reserves the right to schedule the customer's account, including all data stored within the software, for automated deletion.
- 7.7. The customer is thus responsible for performing a timely data backup before the subscription ends. Mategra reserves the right to charge the customer for any kind of efforts to restore or provide data from a terminated subscription.

8. Terms of Payment

- 8.1. The compensation of the paid services offered by Mategra is calculated per month in case of a monthly subscription or per year in case of a yearly subscription. The latest prices are available in the price list of the Testiny website (<https://www.testiny.io/pricing>). The compensation is generally charged in advance for the accounting period in question.
- 8.2. All prices are (unless otherwise stated) exclusive of the currently applicable sales tax and other charges. A cash discount is not provided or granted.
- 8.3. Mategra is entitled to unilaterally alter the current price list and/or the structuring of prices and will notify the customer via email in good time, at least 1 month in advance. If the customer has not objected to the changes within a four-week period or if the customer has agreed to the changes, the changes are deemed accepted and binding. The Customer will be informed about this circumstance in the notification of change.
- 8.4. When placing orders via the Mategra or Testiny website, payment claims are due in accordance with the conditions of the payment provider Stripe (<https://www.stripe.com/>) unless stated otherwise.
- 8.5. Any kind of bank charges and other expenses associated with the transfer shall be borne by the customer.
- 8.6. If no objection is raised in writing within 3 months after an invoice was issued, the invoice is considered as accepted.
- 8.7. In case of late payments, Mategra reserves the right to charge interest on the outstanding amount at the rate of 10% p.a. to the customer, plus reasonable reminder fees. Necessary and appropriate costs arising from the intervention of attorneys and collection agencies shall be borne by the customer. Payments made by the customer shall first be credited against any expenses or interest on arrears incurred, and subsequently against the oldest debt.
- 8.8. A set-off of Customer's claims against Mategra is fully excluded. The customer shall not be entitled to withhold payments due to any claims or defects.

9. Free Services

- 9.1. For any services or software offered by Mategra free of charge ("Free Services"), the following shall apply in derogation of [section 5](#) (Warranty, Limitation of Liability and Malfunctions) hereunder: the software or services are provided "as is" and "as available" with all faults and without warranty of any kind; and the entire risk as to satisfactory quality, accuracy, and effort is with the customer.

- 9.2. All warranties or conditions, express or implied, regarding the software, including without limitation any warranties of merchantability; fitness for a particular purpose, non-infringement, title, availability, non-interference with customer's quiet enjoyment, that the software will meet customer's requirements, are able to operate on an uninterrupted basis, secure and non-infringement of third party rights, are hereby expressly disclaimed.
- 9.3. Without limiting the foregoing Mategra does not warrant uninterrupted or error-free operation of the software. Furthermore, the customer acknowledges that Mategra shall not be responsible for and does not control the third party provider servers. customer understands and acknowledges that neither Mategra nor the third party provider shall be responsible for any data, information or other material placed on such servers.
- 9.4. Neither Mategra nor the third party provider are responsible for any loss of data or harm done to customer's hardware, systems or other equipment arising out of or relating to customer's use of the software: the customer understands and agrees that use of the software is at the customer's own risk and discretion.

10. Governing Law

- 10.1. Insofar as nothing else is agreed on, only the legal provisions regarding business-to-business transactions according to Austrian law shall apply, even if the order is implemented abroad. The jurisdiction of the objectively competent court in Graz/Styria, Austria, shall be exclusively agreed upon for any and all disputes arising out of or in connection with this agreement, including any question regarding their existence, validity or termination.
- 10.2. The application of the United Nations Convention on Contracts for the International Sale of Goods shall in any case be excluded.
- 10.3. In the event that any disputes, which cannot be solved by mutual agreement, arise from this Contract, the parties to the contract agree to engage a listed mediator (Austrian Civil Rights Mediation Law (ZivMediatG) specialized in business mediation from the list of the Austrian Ministry of Justice in order to reconcile these out of court. Should no mutual agreement regarding the selection of the business mediator or with regard to content be possible, legal measures shall be initiated no sooner than one month after the negotiations fail.
- 10.4. In the event that mediation could not be held or was discontinued, any litigation initiated shall be subject to Austrian law. As agreed, all necessary costs incurred due to previous mediation, particularly for legal advisors consulted, may be claimed in litigation or arbitration as 'pre-trial costs'.

11. Final provisions

- 11.1. 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.
- 11.2. Any disposition by the customer of the rights or obligations existing under the contract requires the prior written consent of Mategra. However, Mategra shall be entitled to transfer the contract in whole or in part to a third party even without the customer's consent.
- 11.3. Mategra shall be entitled to use third parties for the fulfillment of its obligations in whole or in part.
- 11.4. The customer agrees to be named as a reference customer on Mategra's customer lists, its website, and its marketing and promotional materials and permits Mategra to display the customer's name and its logo. It is stated that Mategra will especially coordinate the use of the customer's logos or project data with the customer prior to publication. The customer may revoke this authorization in writing at any time.
- 11.5. The customer shall immediately notify Mategra of any changes in its address. Should the customer fail to do so, Mategra's declarations shall be deemed delivered even if delivered to the last valid means of communication.
- 11.6. The customer accepts that Mategra may send legally significant declarations to the customer also by e-mail or other electronic media. This shall also apply to invoices; if applicable, these shall be digitally signed in order to comply with the provisions of the Value Added Tax Act (Umsatzsteuergesetz). Declarations are considered received as soon as the customer can retrieve or take note of them under ordinary circumstances.

12. Third party licenses

- 12.1. Please visit <https://app.testiny.io/licenses.txt>