# TESTONA

## License and Support Conditions

# 1. Grant of License

## 1.1 Contractual subject matter

**1.1.1** The licensor grants the customer, upon the terms and under the conditions set forth in the following, a non-transferable, non-exclusive right to use the computer programs of Expleo Germany GmbH, mentioned in the offer (in the following programs), within the mutually agreed upon countries.

**1.1.2** The programs are supplied to the customer in executable form (as object code programs) or made available via download from the internet. Unless otherwise agreed, delivery can be carried out by email. The programs may be protected by hard lock or soft key protection mechanism at the sole discretion of the licensor. All documentation is printed on paper or made available in an electronic version. Programs and documentation are hereinafter referred to as "license material".

**1.1.3** Part of the license material is also new editions or supplementations of the license material, which licensor leaves to the customer during the contract period.

**1.1.4** New editions and supplementations of the license material are offered to the customer in a suitable period after their availability.

**1.1.5** Lease of rights in the computer programs of third parties mentioned in the delivery note are subject to the license conditions of the respective third party. Claims exceeding said license conditions regarding such computer programs of third parties cannot be asserted against Expleo Germany GmbH.

**1.1.6** The lease of rights of hardware components of third parties, which is addressed in the delivery note, as well as the scope of the warranty are subject to the license conditions of the respective third party. Further claims of these conditions in respect of such hardware components of third parties cannot be asserted against the Expleo Germany GmbH.

## 1.2 Extent of use

**1.2.1** The customer is authorized to use the leased programs on the data processing unit (in the following: DP unit) mentioned in the delivery note.

**1.2.2** The term "use" as applied in this contract shall mean and comprise all permanent or temporary total or partial copy by downloading, displaying, executing, transmitting, or saving the programs to the purpose of their execution, and the processing of the data sets contained therein in the DP unit. In devices connected to the DP unit, the authorization to use is restricted to saving and displaying.

**1.2.3** If the DP unit mentioned in the delivery note is temporarily not operating, customer is entitled to use the programs and data sets during this period on another data processing unit. In all other cases, using the programs on another DP unit than the indicated one requires licensor's written consent. The customer is not authorized without separate written agreement to make the programs available within a local network to other data processing units than the one indicated in the delivery note.

**1.2.4** License material handed over as printout may only be copied with licensor's written consent.

**1.2.5** Part of the contractual use is the generation of backup copies.

**1.2.6** The customer is authorized to connect the leased programs to other computer programs. The applicant documentation may contain a description of the interfaces intended therefore. Further-reaching changes of the programs and error corrections are only permitted to the extent needed for the purposeful use of the programs. Decompilation of the programs into another display form is prohibited. A partial translation of the code version for the purpose of generating interoperability of an independently generated computer program with a leased computer program or with other computer programs under the restrictions indicated are – under § 69 e UrhG (German Copyright Act) – exempted therefrom.

**1.2.7** The customer is entitled to sell the right to use each program in an executable form (object code program, not source code program) to third parties if he renounces use of the program and if the other party accepts the license conditions in a declaration to Expleo Germany GmbH before receipt of the data carriers with the program.

If the customer is entitled to use a program on various DP units, he may transfer the right to use only to a third party as a whole. The customer may revoke this restriction if he completes the right of use for individual DP units, i.e. that he balances the received quantity discount – related to the number of DP units for which he wants to transfer the right of use.

## 1.3  Protection of the license material

**1.3.1** Irrespective of the rights of use granted under no. 1.2, licensor, or licensor of licensor (manufacturer of the license material) reserves all rights in the license material including all copies or partial copies thereof, made by customer. The customer's title to machine-readable recording carrier, data memories, and data processing devices will remain unaffected hereby.

**1.3.2** The customer undertakes to maintain the protection notes, such as copyright protection notes and other legal reservations in the license material unamended, and to take them over in complete or partial copies of machine-readable license material made by customer unamended.

**1.3.3** The customer undertakes to neither make the license material accessible to third parties in its original nor in the form of complete or partial copies without written consent by licensor. This is also true for the case of a complete or partial sell or breakup of customer's company. Employees of customer or other persons are not considered as third parties as long as they are entrusted with the use the license material according to the contract.

**1.3.4** The customer will completely delete license material saved in machine-readable recording carriers, data memories or data processing units prior to destroying, selling or otherwise transferring them.

## 1.4  Fees

**1.4.1** The fees are payable within 14 days from invoice date without deduction. Sales tax is invoiced separately.

## 1.5  Warranty

**1.5.1** The parties agree that it is not possible to develop programs such that they are faultless for all application conditions. The licensor hands over a documentation at the latest state for the programs, indicating the purposeful use and the use conditions of the program.

**1.5.2** For the program in the version handed over to customer, licensor warrants the contractual use in correspondence with the documentation valid at the time of distribution and in the form which is available for customer before conclusion of the contract. In the case of considerable deviations from the performance description reproduced in the documentation, licensor is authorized and committed to remedy, unless connected to unreasonable work. If licensor does not manage within a suitable period to rectify or circumvent the considerable deviations from the performance description by remedy such that the customer is enabled to a contractual use of the program, the customer can assert his legal rights to conversion or reduction. A limitation period of 12 months from handover of the license material applies.

**1.5.3** The customer undertakes to make available to licensor reviewable documents on the kind and occurrence of deviations from the performance description and to cooperate in the containment of errors.

**1.5.4** Warranty is not extended to deficiencies caused by deviations from the conditions of use intended for the program and indicated in the performance description. It is also not extended to copies of the license material made by customer.

## 1.6  Conditions of use

**1.6.1** The license material leased to customer was developed for the use on certain data processing units and for the interaction with certain other programs. These conditions of use are indicated in the documentation.

**1.6.2**   In case of use of the license material without complying with the conditions of use under no. 1.6.1, the obligation of warranty under no. 1.5 is forfeited.


## 1.7  Protective rights of third parties

**1.7.1**   As far as third parties raise claims against customer derived from an infringement of a commercial protective right or copyright by the contractually used license material in the Federal Republic of Germany, licensor will either provide the customer with the right to further use the license material, replace the license material or modify it such that it no longer infringes third party's rights, or will reimburse to customer an amount based on a linear amortization of the license material over three years from handover, as selected by him and at his own expense. This balances all claims relating to the license material itself. Any exceeding damage is to be compensated under the precondition of no. 3.5, if applicable.

**1.7.2**   The licensor's liability is excluded, should the claims under no. 1.7.1. be based on programs or data made available by customer, or on the fact that the program or data sets contained therein are not used in a valid unamended original version supplied by licensor or under other conditions of use than indicated in the documentation or in connection with a use for which the program was not designed.


## 1.8  Conditions for pre-release program versions

**1.8.1**   As long as the customer receives pre-releases or beta-versions of the program the following provisions shall apply. A Pre-release of the program is a non-finished, not fully tested version of the program and may cause besides other problems functional errors, system breakdowns in software and hardware and loss of data.

**1.8.2**   Upon request of the licensor, the customer shall give back or destroy all copies of pre-release program version.

**1.8.3**   As far as not prohibited by law, the licensor shall not be liable for any special, consequential or incidental damages of any kind, including but not limited to lost data or lost profits or claims made against customer for infringement of third party property rights, resulting from the use of pre-release program versions, or caused by a defect, failure or malfunction of pre-release program versions.


## 1.9  Conditions for institutions of education

**1.9.1**   If the customer receives program version solely designated for use by institutions of education and their students, customer shall prove to meet the necessary certifications and standards of such an institution.

## 1.10 Cancellation, restitution, and deletion of license material

**1.10.1** The contract may be cancelled by both parties without notice for important reasons. This is in particular true in case of violation of the regulations under no. 1.2 "Extent of use" and no. 1.3 "Protection of the license material".

**1.10.2** With effectiveness of the cancellation, irrespective of its time and reason, customer undertakes to return the original and all copies and partial copies of the license material to licensor. In case of license material, recorded on machine-readable recording carriers of customer, complete deletion of the record replaces said restitution.

## 1.11 Limitation, additional agreements

**1.11.1** Claims on the basis of violations of regulations under no. 1.2 "Extent of use" and no. 1.3 "Protection of the license material" are forfeited 6 years after their accruement, all other claims from this contract 3 years after their accruement, unless shorter statutory limitation period are effective.

## 1.12 Use of Open-Source Software

This software contains components that are licensed under various open-source licenses.

### 1.12.1 Definition and Scope

"Open-Source Software" (OSS) refers to software that is distributed with its source code and is publicly available for use, modification, and distribution. OSS software includes a license that allows programmers to modify the software and control how it can be distributed.

### 1.12.2 Use of Open-Source Components

TESTONA contains OSS components that are distributed solely under the applicable OSS license terms. Relevant licenses include, but are not limited to: Eclipse Public License, BSD License, ANTLR License, Apache License, Mozilla Public License, GNU Lesser General Public License.

### 1.12.3 Priority of OSS Licenses

The OSS license agreements for the OSS contained in the software apply independently of the provisions of this license agreement and take precedence over them for respective parts.

### 1.12.4 Notification and Description

Upon delivery of the software, the customer receives a list of OSS licenses applicable to the customer. The Java Runtime Environment included has its own OSS licenses. The full license texts of the used OSS components are included in the software.

### 1.12.5 Compliance with License Terms

The customer is required to comply with the license terms of the used OSS components. This covers provisioning of source code, naming of authors and complying with the respective license terms. Modifications to the OSS components must be documented and redistributed in accordance with the respective license terms.

### 1.12.6 Disclaimer of Liability and Warranty

In no event shall the licensor of this software be liable for any special, consequential, incidental or indirect damages whatsoever (including, without limitation, damages for loss of business profits, business interruption, loss of business information, or any other pecuniary loss) arising out of the use of or inability to use OSS components, even if the licensor is aware of the possibility of such damages and known defects.

## 2. Support Agreement

## 2.1 Contractual subject matter

**2.1.1** The licensor undertakes support of the programs according to the regulations of no. 2 of these conditions. The support comprises a maintenance service for maintenance of the programs' operability and for elimination of errors occurring in the programs; however, any impairment or interruption of operability cannot be excluded. Support is also extended to the documentations belonging to the programs.

**2.1.2** Support is restricted to the installation of the programs on the DP units. If the installation site is changed in agreement with licensor, additional costs incurred during execution of support by the change of the installation site are paid by customer.

## 2.2 Scope of Services

**2.2.1** The licensor performs a maintenance service at call to rectify errors and other deficiencies caused during the use of the programs indicated in the delivery note and/or become obvious in the assigned application documentation. An error applies if the program does not fulfill the functions indicated in the documentation, supplies wrong results, stops its execution uncontrolledly or otherwise does not operate customary, so that the use of the program is prevented or impaired. Other deficiencies are imperfections of the program, which do not impair its function. The non-recurrent information of customer's personnel on the extent and nature of the executed support work is part of maintenance service.

**2.2.2** The licensor will have his employees take efforts to cause the quickest possible rectification of occurring errors of the software, in particular by qualified advise, information and explanation, if applicable also by contacting the programmer. To the above end, licensor has set up a "hotline" and will perform it during the course of the support contract under no. 2 of this agreement (in the following support agreement).

Said support services of licensor are generally provided in that he is telephonically or via other electronic means of communication at customer's disposal for information. Subject to an amended company or tariff work regulation, licensor is available for services from Monday to Friday, from 9 a.m. to 5 p.m. MEZ/MESZ, apart from his company holidays (December 24, to January 1) and apart for bank holidays.

**2.2.3** The performance obligations only extended to the most recent software version released by licensor and to the directly preceding one. This is only true as far as customer had the possibility to get the changed software version at reasonable conditions. If customer modifies the software without being caused by licensor, licensor is released from his performance obligation under maintenance of the claim to the support compensation.

**2.2.4** The licensor supplies the customer without additional fees with all standardized error rectifications, refinements, and other expansions of the license material, handed over by the programmer for general handover to customer free of charge. The decision whether a software is handed over free of charge or whether the expansion is only made available against remuneration – e.g. if the function's extent is clearly changed – is in the sole discretion of licensor.

**2.2.5** Not included in the support services are:

a) maintenance outside the maintenance standby periods regulated in no. 2.2.2,

b) maintenance for programs not used under the conditions of use indicated by licensor,

c) maintenance for programs changed by programming at customer's side,

d) maintenance for program parts which are not part of the original version of the programs indicated in the delivery note,

e) maintenance for program parts the function of which depends on other programs, unless a corresponding support contract for these programs exists between customer and licensor, too,

f) change for program adaptations to the realization of which a re-programming of individually usable program modules is needed and purposeful according to the program's technology,

g) instruction of customer's personnel in excess of the framework indicated in no. 2.2.1.

h) designing or leasing programs or advisory activity thereon or on the use of DP units,

i) support services of licensor called by customer due to difficulties in the use of the software or other circumstances not caused by an error in the sense of no. 2.2.1. Among them are in particular cases of mal-operation, hardware faults, faulty power supply, accident and left-out implementations of corrections supplied by licensor,

j) other performances performed by licensor in consent with customer, not covered in no. 2.2.1 and 2.2.2 of this agreement.

**2.2.6** Additional services according to no. 2.2.5 will be effected by licensor on request of customer against separate invoice, if he has sufficient support personnel available at the time of calling. Billing is done according to hourly work on the basis of the commonly valid hourly rates of licensor at the time of calling.

**2.2.7**   As far as work is to be done at the installation site, travel expenses and hotel expenses are separately invoiced to customer.

**2.2.8**   The maintenance and support of computer programs of other producers mentioned in the delivery note are directed on the maintenance and support conditions of the respective producer. Claims in excess of these maintenance and support conditions relating to such computer programs of other producers cannot be asserted against Expleo Germany GmbH.

## 2.3  Suspension of Maintenance

**2.3.1**   The customer can decide to suspend the maintenance services for a time period of his choice. The customer shall inform Expleo Germany one month in advance in written form. During the suspension, no costs incur for the customer.

**2.3.2**   After the restart of the maintenance services, the customer shall pay for the suspended maintenance services with retroactive effect to the date of the purchase order or the expiration date of the maintenance package that has not been extended. At the same time, the customer acquires one year of maintenance services.

## 2.4  Cooperation obligation of customer

**2.4.1**   The customer undertakes to support licensor's activity. In particular, he undertakes to generate all preconditions within his company sphere, which are required to orderly carry out licensor's performance, in particular:

a)  to prevent calling services of licensor by personnel not authorized to call such performance,

b)  to immediately communicate occurring breakdown of the programs by the contact persons in charge,

c)  to specify these breakdowns in writing in a manner enabling review, and to documentation them and to transfer the document thereon to licensor, respectively to late-file the written note in case of telephonic contacting,

d)  to grant licensor free access and to enable him to use the equipment needed to give the performance.

**2.4.2**   As long as customer does not comply with this obligation of cooperation, licensor is released from an obligation of performance, maintaining his right of remuneration.

## 2.5  Remuneration and conditions of payment

**2.5.1**   The licensor receives an annual flat-rate payment of the amount defined in the currently applicable price list for provision of the support services under no. 2.2.1 and 2.2.2. The claim to the flat-rate payment is

not dependent on and in how far services were rendered. The flat-rate remuneration is due at the beginning of each year of the contract's duration.

If the contract expires prior to the expiration of a complete contractual period, the time is proportionally calculated for every started month of this period. The invoices sent by licensor are payable within 14 days from receipt of the invoice, without deduction. All remuneration and cost reimbursements are to be paid plus the legal VAT.

**2.5.2** The licensor has the right to change the remuneration by written announcement, maintaining a 6 weeks' deadline up to the end of each contractual period. Such amendment, however, is admissibly at the earliest for the second contractual period and must not exceed the previous 12 months' period's fees by more than 10%. If an increase of the fees or overhead by more than 5% of the previous 12 months' period is done, customer may cancel the contract in writing at 3 months notice for the time of the increase, irrespective of other cancellation deadlines.

**2.5.3** If the customer delays payment of due amounts, licensor is authorized to suspend the support services for the time of the delay, maintaining the remuneration claim. Further, licensor is authorized for the time of customer's delay to request delay interest amounting to the legal delay interest if user does not prove that in fact a lower damage was incurred on licensor.

## 2.6  Rights in work results

**2.6.1** For the support of programs which licensor leased to the customer for use within a lease contract, licensor grants customer the right to use the work results of the contractual support works as part of this program for the time of the lease contract under the conditions of this contract. Any further-reaching utilization by customer is excluded. The licensor maintains all other rights to use, also the right to make identical work results available to third parties.

**2.6.2** The work results of the support of customer's programs belong to the customer. Existing rights of third parties are unaffected hereby. The licensor is free to create similar work results for third parties.

**2.6.3** Both contracting parties may freely dispose of ideas, processes, concepts, and other technologies generated during the execution of the contractual support and entering into the work results according to no. 2.5.1. The same is true for knowledge and experience gained during the execution of the contractual support works and the use of their results.

## 2.7  Duration of the contract

**2.7.1** The support contract starts with purchase order date and ends after a period of 12 months. It is expanded by 12 further months every time if it is not cancelled in writing at 3 months notice before the respective expiration.

**2.7.2**    The right to extraordinarily cancel the contract without notice for an important reason is unaffected. An important reason is in particular the delay of a not insignificant part of the remuneration to be paid by customer.

**2.7.3**    The support contract under no. 2 of this agreement ends in any case with termination of the license agreement under no. 1 of this agreement. It further expires if the contractual relations between licensor and programmer are terminated, and if no takeover of the support contract by programmer takes place.

## 3.  Miscellaneous

For the above no. 1 and 2, the following common conditions apply:

**3.1**    Offset or exertion of a right of retention against claims of licensor is only possible against legally determined or undenied claims.

**3.2**    Changes and supplementations of this contract need to be in writing. This is also true for the agreement of revocation of the requirement of the written form. Oral additional agreements become ineffective with conclusion of the contract.

**3.3**    Rights and obligations from this contract cannot be transferred by customer to a third party without licensor's consent.

**3.4**    The licensor shall pay damages or replacement of futile expenses, for whatever legal reason (e.g. obligations from legal transactions and similar to legal translations, violations of obligation and unallowed activities) only and exclusively to the following extent:

a)  Liability for intent and warranty remains unrestricted.

b)  In case of gross negligence, the licensor only assume liability to the amount of the typical damage foreseeable at conclusion of the contract.

c)  Given negligent violation of such a significant obligation that the contractual purpose's achievement is endangered (cardinal obligation), the licensor assumes liability for the typical damage foreseeable at the time of conclusion of the contract. Liability for damage to property is restricted to € 1,000,000.00 and for damage to assets to € 500,000.00. Damage claims against the licensor for delayed performance is restricted to a maximum of 5% of the invoice value of the contract subject matters in question.

The licensor reserves the objection of contributory negligence. Client is in particular responsible for a regular backup of his data and a virus protection according to the current prior art.

For violation of life, body, and health and for claims from the product liability law, only the statutory regulations apply.

**3.5** Both parties undertake to keep confidential any information or documents of the respective other party, which they learn of in relation of the license grant or with the support works, and which are characterized as business or company secret or which are obviously perceivable as such on the basis of other circumstances, and all company-internal events during the contract and after its duration. The same is true for personal data, covered by the regulations of data protection.

**3.6** The customer shall not use, send, or otherwise distribute the program in or to a country if this act constitutes a violation of German law and regulation concerning the export of goods and services. If the program is subject to export control, customer warrants that he is not subject of a country to which an export is not allowed according to German law and regulation. All rights of use for the program are licensed only under the conditions that these rights expire immediately if customer shall not apply to the aforesaid provisions.

**3.7** The contractual relation shall be governed by German law only.

**3.8** The place of delivery for the services owed from this contract is licensor's residence.

**3.9** Jurisdiction is Munich.

**3.10** The other regulations are unaffected by the ineffectiveness of one or more regulations of this contract. The contracting partners will in this case conclude a legally effective alternative regulation which is as close to the economic purpose of the ineffective regulation as possible