



# TEXPACK

## Subscription Activation Form for Software update services

**GARAGE EQUIPMENT  
DIVISION**

TEXPACK\_EN\_042023

### IDENTIFICATION OF THE CONTRACTING PARTIES

#### CUSTOMER

Company name	VAT Number	
Address	Postcode	Prov.
Town/City	Phone	
Fax	Mobile phone	
E-mail	Certified e-mail	

#### DISTRIBUTOR

Company name	VAT Number	
Address	Postcode	Prov.
Town/City	Phone	
Fax	Mobile phone	
E-mail	Certified e-mail	
Contract start date (month and year)	Minimum initial period (months)	

NEW CONTRACT

SUBSEQUENT INTEGRATION

### DESCRIPTION OF THE SOFTWARE PROVISION CATEGORY AND METHODS OF SERVICE

#### TEXA SOFTWARE CATEGORY

CAR  TRUCK  BIKE  OHW  MARINE  KONFORT

#### METHODS OF SERVICE PROVISION

SENDING DVD  INTERNET  DISTRIBUTOR SUPPORT

### DESCRIPTION OF TEXA TOOLS, SERVICE AND RELATED ANNUAL FEES

SERIAL NUMBER	SERVICE CODE	SERVICE NAME
Fee for the minimum initial period (VAT not included)		<input type="text"/>
Fee for the subsequent annual renewal (VAT not included)		<input type="text"/>

By signing this Subscription Activation Form, the contracting parties confirm that the data indicated above is correct and declare that they accept the terms and conditions of the service covered by this Contract, including the Terms for the Provision of the Service specified in the following pages.

Date \_\_\_\_\_

Distributor

Customer

Stamp and Signature

Stamp and Signature

The Customer expressly approves and accepts, pursuant to the articles 1341 and 1342 of the Italian Civil Code, the provisions in the following articles of the Terms for the Provision of the Service: art. 2 (Execution of the Contract), art. 3 (Service description), art. 4 (Service activation, duration and cancellation), art. 5 (Customer obligations), art. 6 (Fees, invoicing and payment), art. 7 (Termination and suspension of the Service), art. 9 (Limitation of liability), art. 10 (Indemnity), art. 11 (Applicable law and Competent court), art. 13 (Final clauses).

Customer

Stamp and Signature

# TERMS FOR THE PROVISION OF THE TEXPACK SERVICE

These terms and conditions ("**Terms for the Provision of the Service**"), together with the special conditions as described in the Subscription Activation Form, govern the terms and conditions of provision of the subscription Service and its use by the Customer. By signing the Subscription Activation Form, the Customer declares to have received full knowledge of the Service conditions and functions, as well as the contents of the Contract, by the Distributor.

## 1. DEFINITIONS

The terms indicated below, where indicated with a capital letter, shall have the following meaning, it being specified that the terms defined in the singular shall also refer to the plural and vice versa.

**"Database"**: the database that includes ancillary technical information to help in diagnostic and service operations on vehicles that is provided by third-party TEXA partners and included in the Software Programs.

**"Vehicle Diagnostic Data"**: the vehicle data that the Customer can access by activating the Service.

**"TEXA Software Category"**: the TEXA diagnostic software category is the one indicated in the specific box in the Subscription Activation Form.

**"Fee"**: it indicates without distinction the Fee for the Minimum Initial Period and the Fee for the subsequent annual renewals, as specified in the Subscription Activation Form.

**"Customer"**: the natural or legal person identified in the Subscription Activation Form that has entered into the Contract, requesting the provision of the Service.

**"Contract"**: these Terms for the Provision of the Service together with the conditions in the Subscription Activation Form.

**"Contract Start Date"**: the month and year indicated in the Subscription Activation Form.

**"Subscription Activation Form"**: the form containing the special contract conditions and the details about the Service activation.

**"Minimum Initial Period"**: the initial period of time, expressed in months, for which the Customer undertakes to request the provision of the Service indicated in the Subscription Activation Form, starting from the first day of the month of the Contract Start Date.

**"Distributor"**: the authorised TEXA distributor identified in the Subscription Activation Form, who, pursuant to a valid and current contract for authorised distributor of TEXA products, signed with TEXA, sells the Service to the Customer, with full business independence, and issues the related sales invoice. It also manages the relationship with the Customer autonomously, and provides the necessary support for a proper use of the Service.

**"Service"**: the ancillary service, by subscription, as described in article 3.1 below.

**"Software Programs"**: the TEXA Software together with the software that TEXA is entitled to use pursuant to partnership and/or license agreements.

**"TEXA Software"**: the software developed and produced by TEXA and licensed for use to the Customer, which can be used with the TEXA Diagnostic Tool, or with a PC or other compatible devices.

**"TEXA Diagnostic Tool"**: the diagnostic tool or diagnostic interface produced by TEXA that is owned by and/or made available to the Customer and where the TEXA Software licensed for use, and updated to the latest version, is installed and operating.

**"Third Party"**: it indicates any person, natural or legal, other than the Customer, the Distributor and TEXA.

**"TEXA"**: the company TEXA S.p.A. with registered office in Monastier di Treviso (Italy), Via 1° Maggio no. 9, tax code and VAT number: 02413350266, which produces the TEXA Diagnostic Tools, the TEXA Software, and makes the Service available.

## 2. EXECUTION OF THE CONTRACT

2.1 The Contract is executed when the Subscription Activation Form is properly filled out and signed both by the Customer and by the Distributor.

## 3. SERVICE DESCRIPTION

3.1 Subject of the Contract is the provision to the Customer, for the entire duration of the Contract, of the update Service for the Software Programs licensed for use with separate license agreements for use and listed in the box on the first page of this Contract. The Customer undertakes to install the updates, corrections and/or new versions of the Software Programs supplied, taking note that, should he/she fail to do so, the software may be ineffective, even only partly. The subscription fee includes the following:

a) the update of the application programs when improvements or functional extensions are made to the basic Software (operating system) with which the programs licensed for use by TEXA have been installed;

b) the updates of the Software Programs prepared subsequent to any changes in the law, regulations or administration;

c) the provision to the Customer of any corrections or revisions of the Software Programs released on the initiative of TEXA, in the event of any anomalies, errors or malfunctioning;

d) the provision to the Customer of ancillary services that allow using special self-diagnostic functions and/or carrying out protected diagnostic functions, based on the availability stated by TEXA.

3.2 The updates of Software Programs assume the availability by the Customer of the TEXA Diagnostic Tool with up-to-date and active TEXA Software or another compatible device with up-to-date and active TEXA Software installed, and will be carried out with one of the following methods:

a) By the Distributor's sending the Customer DVDs containing updates relating to the programs listed in the box on the front page of this Contract. The shipment shall include:

i. the DVD containing the update;

ii. instructions describing how to install the update.

The shipment will be made by the Distributor's chosen courier, and the related costs will be borne by the recipient Customer, unless otherwise expressly agreed with the Distributor.

b) By means of an internet connection between the Customer and a central computer system made available by TEXA. In this case, the Customer must have hardware devices and an internet connection suitable for the Service to operate. All costs relating to the Internet or telephone connection required for the update shall be borne by the Customer. Failure to meet the above-mentioned requirements will result in the impossibility to use the Service, in whole or in part, without any liability being attributable to the Distributor or TEXA.

c) At the Distributor's premises and will include the installation of the update in the memory support of the tool containing the program, by the Distributor's technical service.

Either Party can choose to change the method of Service provision at any time by communicating the new decision to the other Party in writing.

3.3 The Customer must guarantee the confidentiality of the Software Program contents, their updates and any changes made thereto.

## 4. SERVICE ACTIVATION, DURATION AND CANCELLATION

4.1 The Service will be activated from the Contract Start Date or, if later, within 2 (two) working days from the date in which the data indicated in the Subscription Activation Form, duly filled out and signed, is uploaded in TEXA's ERP "Servicecode", except for the cases in which a longer term is needed due to objective impediments. The successful activation of the Service will be visible by accessing the specific icon in the TEXA Software.

4.2 The Contract shall have the initial duration indicated in the "Minimum Initial Period" box in the Subscription Activation Form, with effect as of the first day of the month indicated in the "Contract Start Date" box in the Subscription Activation Form; once the Minimum Initial Period has elapsed, it will be automatically renewed for other periods of 12 (twelve) months each, unless it is terminated pursuant to the provisions of the articles 4.3 and 7 below.

4.3 The Customer may cancel the automatic renewal of the Contract by notifying the Distributor in writing, by registered letter with acknowledgement of receipt or certified e-mail, which must be sent at least 60 (sixty) days prior to: i) the last day of the Minimum Initial Period; or, ii) the last day of the annual renewal duration. It is understood that, until such date, the Service will continue to be provided and the fees entirely due. Should the Customer fail to respect the above-mentioned notice period, the Contract will be automatically renewed for another 12 months. In any case, the Customer will not be entitled to any refund of the amounts already paid to the Distributor.

4.4 The Customer undertakes to check with the Distributor, prior to and throughout the duration of this Contract, the availability and the operational conditions of provision and use of the Service.

## 5. CUSTOMER OBLIGATIONS

5.1 The Customer undertakes to use the Service in compliance with the laws, the regulations in force and the Contract provisions, as well as in respect of Third Party rights.

5.2 The Customer undertakes to view the information supplied by the Distributor with regard to the technical characteristics required to access the Service and carefully comply with the instructions about the operation of the Service.

5.3 The Customer undertakes to report and describe any flaws or errors found during use of the Software Programs to the Distributor or TEXA, without this leading to any claim for intellectual property rights for any suggestions that may lead to program improvements. All intellectual property rights relating to programs that may be changed by TEXA following received suggestions shall remain the exclusive property of TEXA.

5.4 The Customer shall inform the Distributor in advance of any change in the contact details, including the e-mail address, as well as of any change in the address of the Customer's registered office, making sure such communication has been received by asking the Distributor for confirmation.

## 6. FEES, INVOICING AND PAYMENT

6.1 The Fee for the Minimum Initial Period will be charged to the Customer by the Distributor in advance for the entire duration of the Minimum Initial Period.

6.2 The subsequent annual Fees will be charged to the Customer by the Distributor in advance for the entire annual duration of the renewal.

6.3 Payment for the Fee shall be made by the Customer within the time limit indicated in the related invoice. The VAT applicable by law will be applied to all the invoiced amounts.

6.4 The Fee will remain unchanged for the Minimum Initial Period. Then, the Distributor will be

entitled to update the Fee for the subsequent annual renewal, within the limit of the maximum price recommended by TEXA, upon notice to the Customer at least 30 (thirty) days prior to the date in which the payment of the annual Fee is due and granting the Customer, for such period of time, the right of cancelling the automatic renewal of the Contract. Such notice shall be sent by registered letter with acknowledgement of receipt or certified e-mail. The proposed variation of the Fee for the subsequent annual renewal will be considered accepted by the Customer if no cancellation is communicated within the above-mentioned term.

6.5 The management of invoicing and payment of fees relates only to the contract relationship between the Distributor and the Customer.

## 7. TERMINATION AND SUSPENSION OF THE SERVICE

7.1 Should the Customer fail to pay the due Fees within the agreed terms, the Distributor will be entitled to terminate the Contract, without any prejudice to the right of compensation for damages, upon notice to the Customer by registered letter with acknowledgement of receipt or certified e-mail to the address indicated by the Customer.

7.2 The possible termination of the Service provision by TEXA or Third Party assignors of the latter, for any reason, including the obsolescence of the Software Programs and/or the non-compliance with the required security standards, will entail the legal termination of the Contract. The Distributor shall notify the Customer in writing, who will be entitled to a refund for the Fee paid in advance, for the fraction relating to the months in which the Service is no longer available.

7.3 The Customer acknowledges that, also in order to guarantee the technical suitability for use of the Service, the Distributor has given an irrevocable mandate to TEXA, which accepted, to exercise the right of termination of this Contract on behalf of the Distributor, with a copy of such communications sent to the latter also, if TEXA notices a misuse or a risk for the security of the TEXA Software, including any infringement of the provisions in article 9.5. By signing this Contract, the Customer accepts the mandate given to TEXA for the purpose of notification of termination of the Contract, thus acknowledging that termination notice of this Contract can be given by the Distributor or by TEXA on behalf of the Distributor.

7.4 The expiration or termination of the contract for authorised distributor of TEXA products signed by the Distributor and TEXA will not extinguish the rights of the Customer. TEXA will be entitled to take over the rights and obligations arising from the Contract, directly or by designating another authorised distributor, notifying the transfer of the Contract pursuant to the article 1407 of the Italian Civil Code. The Customer pre-emptively agrees to a possible transfer of the Contract to TEXA or to another authorised TEXA distributor, pursuant to the articles 1406 and 1407 of the Italian Civil Code.

7.5 Provision of the Service may be interrupted, limited or suspended, fully or partly, without warning or indemnity, should the Customer have acted in any way prohibited by current laws / regulations and/or behave incorrectly, by this intending any action that may be even only potentially damaging for the Distributor, TEXA and/or Third Parties.

## 8. INTELLECTUAL PROPERTY

8.1 The Customer acknowledges that the Service, as well as all the Software Programs required for providing the Service, are developed by TEXA or Third Parties, or are available to TEXA in any case, and the latter reserve all rights. The Software Programs required for providing the Service are granted to the Customer under a non-exclusive license with a fixed duration based on the duration of this Contract.

8.2 The Customer is required to use the Service within the extent of this Contract and in full compliance with the intellectual and industrial property rights of TEXA and/or Third Parties, as well as any applicable law and regulation, including the license agreements for the Software Programs. The Customer shall be liable for any claims brought by Third Parties due to misuse of the Service or Software Programs and for the consequent violation of intellectual or industrial property rights or other Third Party rights, with expressed indemnity in favour of the Distributor and TEXA.

8.3 The Contract does not grant the Customer any rights to use brands or logos of TEXA or Third Parties.

## 9. LIMITATION OF LIABILITY

9.1 Under no circumstances shall the Distributor or TEXA be liable for any damage that may arise from the repair and/or maintenance operations performed by the Customer on vehicles using the Services.

9.2 The Distributor and TEXA do not provide any guarantee in relation to the accuracy, reliability, currentness and completeness of the Vehicle Diagnostic Data or the Database. The use of the Vehicle Diagnostic Data and the Database is under the Customer's sole responsibility and at their complete risk. The Customer declares that they have the necessary skills to make responsible use of the information and data contained in the TEXA Software and programs and in the updates supplied under this Contract. The Customer is also aware that such data and information may not be exhaustive, and must be used as an integration of their own professional knowledge. The Customer is aware and accepts that the Vehicle Diagnostic Data and the Database, for reasons relating to the technological evolution, may be subject to changes in the contents and methods of use. The Distributor and TEXA shall not be liable in any case for any direct, indirect or consequential damages deriving from the use of the Vehicle Diagnostic Data.

9.3 The Distributor and TEXA shall not be liable for any damages suffered by the Customer as a consequence of the misuse of the Service by the latter, or for interruptions, suspensions, delays, or malfunctions of the Service due to action of the Customer or Third Parties or dependent on a fortuitous event or force majeure.

9.4 The Distributor and TEXA disclaim all liability with regards to problems relating to telephone or internet connection failures or malfunctions.

9.5 For the Customer to be aware of the liability deriving from the use of the functions of the programs connected to the vehicle safety systems, TEXA has provided for: (i) a notice about the use of certain functions, which the Customer shall carefully read and accept upon first use of the diagnostic tool; (ii) a specific authorisation to use special self-diagnostic functions, in particular regarding vehicle safety, for which the Customer must request and receive a specific unlock code by TEXA, the "Special Code", by filling out and signing a form containing the warnings and liability coming from use of the special functions; (iii) for the services that require accessing protected diagnostic operations used by manufacturers on certain vehicles, TEXA has provided for specific authentication procedures, for the user who works on behalf of the Customer, even through identity recognition, as well as the specific acceptance of the conditions of use for such services. If the above-mentioned provisions are not accepted, the Software Programs will not allow using the above-mentioned functions and services; in that case, the Customer will not be entitled to claim any refund or indemnity.

## 10. INDEMNITY

10.1 The Customer undertakes to hold harmless and indemnify the Distributor and TEXA against any claim, including for compensation, which may be brought by Third Parties due to damages arising from use of the Service, breach of Contract, or repair/maintenance operations performed on vehicles.

## 11. APPLICABLE LAW AND COMPETENT COURT

11.1 Every aspect relating to the provision of the Service, governed by these Terms for the Provision of the Service and more in general by the Contract, is regulated by the Italian law and any dispute relating to it shall be subject to the exclusive competence of the Court of Treviso (Italy).

11.2 The relationship between the Distributor and the Customer, even subsequent to the signing of this Contract, shall be governed by the law of the country where the Distributor has its registered office.

## 12. PROCESSING OF PERSONAL DATA

12.1 The processing of personal data carried out by TEXA S.p.A. as Data Controller, including the data provided by the Customer for activation of the Service covered by this Contract, is carried out in compliance with the Personal Data Protection Code (Legislative Decree no. 196/2003) as amended by the Legislative Decree no. 101/2018 and Regulation (EU) 2016/679 - General Data Protection Regulation (hereinafter referred to as "GDPR"), with suitable methods to ensure security and confidentiality. The Customer's personal data will be processed for purposes relating to the provision of the Service and, subject to their consent, for additional purposes, as specifically indicated by TEXA in the privacy policy made available to the data subject. At any time, the data subjects have the right to access the data relating to them and exercise the rights referred to in articles 12, 15-22 of the GDPR, by contacting TEXA S.p.A. at the following e-mail address: [privacy@texa.com](mailto:privacy@texa.com). The Data Protection Officer (DPO) of TEXA S.p.A. can be contacted at the e-mail address: [dpo@texa.com](mailto:dpo@texa.com). The full text of the privacy policy is available on the website [www.texa.com/privacy](http://www.texa.com/privacy).

12.2 The processing of personal data performed by the Distributor as an Independent data controller is governed by the applicable law in the country where the Distributor has its registered office. The Distributor shall inform as appropriate the data subjects, including the Customer, with full indemnity against any charge and liability for TEXA.

## 13. FINAL CLAUSES

13.1 Any change to the conditions and terms of Service set out herein must be made in written form, under penalty of nullity.

13.2 The Customer and the Distributor undertake to confer, as they in fact confer, written validity and full legal effectiveness - also pursuant to art. 1341 of the Italian Civil Code, where applicable - to the approval of the terms and conditions of this Contract sent electronically and accepted by the parties electronically, even by accessing the reserved area with access credentials assigned by TEXA and pressing the approval/acceptance button ("point and click").