

The German Association for Information Technology, Telecommunications and New Media [Bundesverband Informationswirtschaft, Telekommunikation und Neue Medien e.V.] - BITKOM - recommends on a non-binding basis that its members use these General Terms and Conditions for transactions that do not involve consumers. It is left to the addressees' discretion to follow this recommendation or to use other General Terms and Conditions.

Contractual Conditions for the Maintenance of Standard Software -VPS BITKOM-

A: Scope of the Agreement

A 1. Maintained Software

The provider shall render the hereinafter agreed maintenance services only for the current version of the standard software agreed as the subject of maintenance ("Maintained Software") in return for the agreed remuneration. If third-party software is expressly agreed as Maintained Software in the Agreement, this shall be subject to the restrictions described therein.

The provider shall render the following maintenance services:

A 2. Incident Management (*Störungsmanagement*)

2.1 Contractual services

The provider shall receive incident reports (*Störungsmeldungen*) from the customer, assign them to the agreed incident categories, and on the basis of this assignment carry out the agreed actions to analyze and rectify the incidents.

Incident management does not encompass any services that relate to the use of Maintained Software in non-released environments or to changes to Maintained Software made by the customer or a third party.

2.2 Receipt of incident reports from the customer

The provider shall accept properly made incident reports from the customer and ticket them accordingly during its usual business hours. At the customer's request, the provider shall confirm receipt of a incident report by informing the customer as to the assigned ticket.

2.3 Assignment to incident categories (*Zuordnung zu Störungskategorien*)

Unless otherwise agreed, the provider shall assign received incident reports to one of the following categories after an initial review:

a) Serious incident (*Schwerwiegende Störung*)

The incident is due to a problem in the Maintained Software that renders the use of the Maintained Software impossible or only with major limitations.

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The customer cannot work around this problem in an acceptable manner and accordingly cannot complete tasks that cannot be postponed.

b) Other incident (*Sonstige Störung*)

The incident is due to a problem in the Maintained Software that restricts the use of the Maintained Software by the customer more than only insignificantly but without there being a serious incident.

c) Other report (*Sonstige Meldung*)

Incident reports not covered by categories a) and b) are assigned to other reports. Other reports are dealt with by the provider only as per the pertinent agreements entered into.

2.4 Carrying out actions to rectify incidents

Where serious and other incidents are reported, the provider shall promptly initiate corresponding actions to initially localize the cause of the incident on the basis of the circumstances reported by the customer.

If the initial analysis shows that the notified incident is not a incident in the Maintained Software, the provider shall promptly notify the customer to that effect.

Otherwise, the provider shall take corresponding actions for further analysis and rectification of the reported incident or - in the case of third-party software - send the incident report together with its analysis results to the vendor or producer of the Maintained Software with a request for help.

The provider shall promptly provide the customer with actions at its disposal for working around or rectifying an incident in Maintained Software, for example instructions or patches for the maintained software. The customer shall promptly apply such actions for working around or rectifying incidents and promptly report any remaining incidents to the provider after their application.

A 3. Provision of New Versions

3.1 Contractual services

The provider shall provide the customer with certain new statuses of the Maintained Software so as to keep the same up to date and to avoid incidents. To this end, the provider shall provide the customer with updates of the Maintained Software with technical modifications and improvements and also smaller functional enhancements and improvements. Furthermore, the provider shall provide the customer with patches for the Maintained Software and other workaround actions for possible incidents. These new statuses of the Maintained Software are collectively termed "New Versions".

Maintenance services do not include the provision of upgrades with major functional enhancements or of new products or obligations to further develop the maintained software, unless otherwise expressly agreed.

3.2 Duties and rights relating to New Versions

The provider shall provide the customer with the New Versions of the software. The customer shall promptly inspect New Versions and promptly report apparent incidents, whereby Section 377 German Commercial Code (*HGB*) shall apply accordingly. Incidents and problems shall be dealt with as per Clause A 2.

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In so far as the provider has provided the customer with a New Version, it shall maintain the preceding version for a reasonable transition period, which as a rule shall not exceed three months.

With respect to the New Version, the customer shall have warranty claims only if reported faults are reproducible or otherwise demonstrable by the customer. The reporting of faults is governed in particular by Clause 3.2 BITKOM General Terms and Conditions (AV BITKOM).

If the customer is entitled to warranty claims, it shall initially have only the right to subsequent performance (*Nacherfüllung*) within a reasonable period of time. The subsequent performance includes either repair or provision of replacement software at the provider's discretion. The provider shall pay due heed to the interests of the customer when making the choice.

A 4. Contact Point (Hotline)

4.1 Contractual services

The provider shall set up a contact point for the customer (Hotline). This Hotline shall deal with the customer's queries (*Anfragen*) in connection with the technical prerequisites and conditions for use of the Maintained Software and also individual functional aspects.

The Hotline shall not render any services in connection with the use of Maintained Software in non-released environments or with changes to the Maintained Software made by the customer or a third party.

4.2 Receipt and processing of queries

The customer shall nominate to the provider only personnel with appropriate business and technical expertise who are familiar with the internal handling of queries from users of the Maintained Software at the customer. Only these personnel nominated to the provider shall submit queries to the Hotline and use forms provided by the provider. The Hotline shall receive such queries by email, fax and telephone during the provider's usual business hours.

The Hotline shall process properly made queries applying its normal business processes and answer them in so far as possible. The Hotline can respond by referring to the documentation and other training material for the Maintained Software held by the customer. In so far as a response by the Hotline is not possible at all or not promptly, the provider shall further the query for processing, in particular queries relating to third-party Maintained Software.

A 5. Additional Services

Services above and beyond Clauses A 2 to A 4 are not owed under this Agreement, shall require specific agreement and are to be remunerated separately. This can for example relate to additionally agreed callouts to the customer's premises, advice and support for modified software, clarification of interfaces to third-party systems, installation and also configuration support.

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B: General Provisions

The following provisions shall apply alike for incident management (Clause A 2), provision of New Versions (Clause A 3) and the Hotline (Clause A 4).

B 1. Term

- 1.1 Unless otherwise agreed, the maintenance agreement shall commence with delivery as per the license agreement for standard software (Clause 1 VÜ BITKOM).
- 1.2 Upon expiration of any agreed minimum term the maintenance agreement can be terminated in writing with 3 months' notice to the end of a calendar year, however not before the end of the calendar year following the concluding of the agreement. In addition the agreement can be terminated by the provider or customer without notice for good cause.
- 1.3 Declarations of termination are only effective when made in writing.

B 2. Remuneration

2.1 Fixed sum remuneration

The customer shall pay a continuous fixed sum for the maintenance services. The maintenance remuneration shall be due and payable in advance in the invoicing period and shall be invoiced by the provider to the customer at the beginning of the invoicing period. In general the invoicing period shall be the calendar year. If the agreement commences within an invoicing period the remuneration shall be owed pro rata and invoiced upon the conclusion of the agreement.

2.2 Remuneration of additional services

Additional services not covered by the fixed sum remuneration shall be paid for as per Clause 1.1 of BITKOM General Terms and Conditions (*AV BITKOM*).

2.3 Adjustment of remuneration

The provider can adjust remuneration annually to general list prices. The customer shall have a right to termination if the remuneration rates are increased by more than ten percent.

B 3. Right of use (*Nutzungsrecht*)

The customer's right of use of New Versions and other patches for the Maintained Software shall correspond to the rights of use for the preceding version of the Maintained Software. With respect to the rights of use, the rights to the New Versions and other patches shall replace the rights to the preceding versions and other patches after a reasonable transition period - which as a rule shall not be more than one month. The customer may archive a copy.

B 4. Duties of the customer

- 4.1 The customer shall promptly (*unverzüglich*) inform the provider about changes in the deployment environment. In addition, the customer shall ensure that the Maintained Software is used only in a released environment that is supported by the Maintained Software.

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4.2 Unless otherwise agreed, the customer shall also store all documents, information and data furnished to the provider in such a manner that they can be reconstructed in the event of damage to and loss of data media.

B 5. Handover

In so far as software is to be handed over under these conditions and unless otherwise agreed, this shall be effected in the same way as the provision of the Maintained Software

B 6. Data protection

In so far as the provider can access personal data stored on the customer's systems, it shall act solely as a data processing agent (Section 11 Subsection 5 German Federal Data Protection Act (*BDSG*)), and process and use the said data solely to carry out the contract. The provider shall comply with instructions issued by the customer on the handling of the said data. The customer shall bear all and any detrimental consequences of such instructions for the carrying out of the contract. Details for the handling of personal data shall be agreed by the contractual partners in writing in so far as necessary as per Section 11 Subsection 2 German Federal Data Protection Act (*BDSG*) or other statutory regulations.

B 7. Validity of BITKOM General Terms and Conditions (*AV BITKOM*)

In addition, the BITKOM General Terms and Conditions (*AV BITKOM*) shall also apply.

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The contractual terms and conditions are based on non-binding terms recommended by BITKOM e.V. and approved by the Federal Cartel Office.

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