

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.

BITKOM Contractual Conditions for the Maintenance of Hardware - WH BITKOM -

A: Scope of the agreement

A1. Maintained Item

The provider shall render the following agreed maintenance services only for the agreed hardware (herein: **Maintained Item**) in return for the agreed remuneration.

The provider shall render the following maintenance services:

A 2. Preventative maintenance (*Vorbeugende Wartung*)

Preventative maintenance serves to maintain the functioning of the Maintained Item. It applies a support procedure, the nature and extent of which has defined by the provider or, in so far as contractually agreed, by the manufacturer of the Maintained Item. If the provider provides the customer with consumables, wearing or spare parts, VH BITKOM (Contractual Conditions for the Sale of Hardware) shall also apply.

A 3. Incident management (*Störungsmanagement*)

3.1 Contractual services

The provider shall receive incident reports 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 the Maintained Item in non-presumed conditions of use or a maintenance state that has been changed by the customer or a third party. Nor does incident management encompass clarification of interfaces to third-party systems, installation or configuration support.

3.2 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.

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3.3 Assignment to incident categories

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 Item that renders its use impossible or only with major limitations. 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 Item that restricts the use of the Maintained Item 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.

3.4 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 Item, 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. The customer shall promptly apply such actions for rectifying incidents and promptly report any remaining incidents to the provider.

3.5 The provision of consumables, wearing or spare parts is not part of incident management. If the provider provides the customer with consumables, wearing or spare parts, this shall be governed by VH BITKOM (Contractual Conditions for the Sale of Hardware).

A 4. Contact Point (Help desk)

4.1 Contractual services

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

The Help desk shall not render any services in connection with the use of the Maintained Item in non-released environments or with changes to the Maintained Item 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 Item at the customer. Only these personnel nominated to the provider shall submit queries to the Help desk and use forms provided by the provider. The Help desk shall receive such queries by email, fax and telephone during the provider's usual business hours.

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

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 changed deployment environment, clarification of interfaces to third-party systems, installation and also configuration support.

B: General Provisions

The following provisions shall apply alike for preventative maintenance (Clause A 2), incident management (Clause A 3) and the Help desk (Clause A 4).

B1. Term

- 1.1** Unless otherwise agreed, the maintenance agreement shall commence with delivery as per the contract of sale for the Maintained Item (Clause 1 VH 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 lump sum remuneration (*Pauschalvergütung*)

The customer shall pay a continuous fixed lump sum for the agreed maintenance services under Clauses A 2, A 3 and A 4. Consumables, wearing or spare parts are not covered by this fixed sum remuneration. 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 consumables, wearing and spare parts

Consumables, wearing or spare parts which the provider provides to the customer as part of the support procedure (Clause A 2) or with its consent or on a reasonable scale given the value of the Maintained Item are to be paid for separately as per VH BITKOM (Contractual Conditions for the Sale of Hardware).

2.3 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).

2.4 Adjustment of remuneration

The provider can adjust remuneration to general list prices each calendar year.

The customer shall have a right to termination if the fixed sum remuneration rates are increased by more than ten percent. The provider shall inform the customer about any such an increase two months in advance. The customer shall be entitled to terminate the Agreement within one month from receipt of the notification as per Clause B 1.3 for the date such an increase is to take effect.

B 3. Right of use (*Nutzungsrecht*)

The customer's right of use to new versions and other patches to the software supplied in conjunction with the hardware shall correspond to the rights of use for the preceding version. 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.

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 Item is used only in a released environment.

4.2 Unless otherwise agreed, the customer will store all documents, information and data handed over to the provider additionally in that way, that they can be reconstructed in the case of damage or loss of data storage media.

B 5. Implementation

The carrying out of the maintenance is subject to timely and contractually compliant delivery by its suppliers.

The consumables, wearing or spare parts used shall either be new or comparable to new parts with respect to their suitability. Replaced parts shall become the property of the provider.

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.

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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

In addition, the BITKOM General Terms and Conditions shall also apply.

This is only a convenience translation made by Utimaco. In case of doubt the German version shall take precedence.

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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