

DISCLAIMER AND USE OF INFORMATION

The Bitkom General Terms and Conditions are made available to interested ICT companies for their own use for their own purposes.

The German Association for IT, Telecommunications and New Media e.V. (Bitkom) recommends to its members the use of these terms and conditions without obligation for transactions which do not involve consumers. Users are free to follow this recommendations or use other general terms and conditions.

Utilization lies within the responsibility of the user, any liability of Bitkom e.V. is excluded.

The use and legal effectiveness of the regulations in the Bitkom General Terms and Conditions also depend on the environment where they are utilized and the specific use. Therefore, no claim for completeness and/or up-to-dateness or legal effectiveness exist.

The Bitkom General Terms and Conditions are non-binding recommendations of the Bitkom e.V. They may be used only in the original version obtained from Bitkom Servicegesellschaft mbH. Any deviating contract conditions may not be used if through presentation, formulation or reference to Bitkom e.V. or Bitkom Servicegesellschaft mbH they are likely to create the impression in a third-party that they are coordinated with these entities or are equivalent to the original version.

1. Services

1.1 Provider provides the contractual services, particularly the access to the software, in its area of responsibility (from data center interface to the Internet). The scope of services, the nature, the purpose and the conditions of use of the contractual services arise from the respective service description supplemented by the operating instructions for the software.

1.2 Additional services such as the development of customized solutions or necessary adjustments require a separate contract.

1.3 The provider may provide updated versions of the software.

The provider shall inform the customer about the updated versions and corresponding instructions for use electronically and make these available accordingly.

2. Scope of use

2.1 The contractual services may be used only by the customer and only for the purposes set out in the contract. During the duration of the contract, the customer may access the contractual services through telecommunication (via Internet) and may use as contracted the functionalities associated with the software by means of a browser or other appropriate application (e.g. "app"). The customer does not receive any additional rights, particularly in the software or any infrastructure services provided in the respective data center. Any further use requires the prior written consent of the provider.

2.2 The customer may not use the software beyond the agreed scope of use or have it used by third-party or make it accessible to third-party. Particularly, the customer is not permitted to copy, sell or temporarily transfer, rent or lend software or parts of it.

- 2.3 The provider is entitled to take appropriate technical measures as a protection against use that is not in line with the contract. The contractual use of the services may thereby not be more than slightly compromised.
- 2.4 If the user exceeds contractual scope of use or in the case of unauthorized transfer of use, the user has to provide to the provider all information for asserting the claims for the use contrary to the contract, particularly the name and address of the user.
- 2.5 The provider may revoke the customer's access rights and/or terminate the contract if the customer significantly exceeds his/her permitted use or violates regulations that protect against unauthorized use. In addition, the provider may suspend or block access to the contractual services. But before that, the provider has to set a reasonable time limit for the customer to undertake remedial action. The revocation of the access authorization does not apply at the same time as a termination of the contract. The provider may sustain the revocation of the access authorization without termination only for a reasonable time lasting no more than three months.
- 2.6 The entitlement of the provider to be compensated above the use agreed remains unaffected.
- 2.7 The customer has a right to have the authorization and opportunity for access restored, after he has proven that he has discontinued usage contrary to the contract and a future usage contrary to the contract will be prevented.
- 3. Availability, deficiency in performance**
- 3.1 The availability of the services provided is found in the service description.
- 3.2 In the case of insignificant reduction in the viability of the services for contractual use, the customer shall accrue no claims due to deficiencies. The provider's responsibility for defects that were already present at the time of the contract formation is excluded.
- 4. Data privacy and data security**
- 4.1 Insofar as the provider is able to access customer's personal data or from his/her area, the provider shall act exclusively as a contract data processor (German Data Protection Act - § 11 Abs. 5 BDSG) and process and use such data only for the execution of the contract. The provider shall comply with the customer's instructions for handling such data. The customer shall bear any adverse consequences of such instructions for the contract implementation. The contractual partners shall agree in writing on details for handling personal data, insofar as this is necessary in accordance with German Data Protection Act (§ 11 Abs. 2 BDSG) or other legislation.
- 4.2 It is agreed that the customer remains the data owner both generally in the contractual relationship and in terms of data protection law. The customer is the sole authorizing party over all data used by him (entered, processed, stored and output data). The provider and all who perform the contract for him do not control the legal permissibility of the collecting, processing and use of data stored for the customer. The customer bears the exclusive responsibility for collecting, processing and use of personal data.

- 4.3 If the customer collects, processes or uses personal data in connection with the contract, he shall ensure that he is authorized to do so in accordance with the applicable regulations, particularly data protection regulations, and shall indemnify the provider against third-party claims in the case of a violation.
- 4.4 The provider guarantees that customer's data will be stored exclusively in the territory of the Federal Republic of Germany, in a Member State of the EU or in another contracting Member State to the Agreement on the EEA.
- 4.5 The provider may subcontract but must impose the corresponding obligations that arise from the contract and these terms and conditions on each subcontractor.
- 4.6 The provider or any other third-parties employed by him shall take the technical and organizational security precautions and measures to comply with the statutory data protection provisions.

5. Duties of the customer

- 5.1 The customer must protect the access authorizations assigned to him or the users as well as identification and authentication information from third-party access and not share them with unauthorized persons.
- 5.2 The customer is obliged to indemnify the provider against all third-party claims due to legal violations based on the unlawful use of the object of performance by him or with his approval. If the customer recognizes or has to recognize that such violation is imminent, he has to inform the provider immediately.
- 5.3 The customer shall make use of provider's possibilities to additionally secure his data in his original area of responsibility.

6. Use contrary to contract, damages

For each case in which a contractual service is claimed unjustifiably in the customer's area of responsibility, the customer shall pay compensation equal to the remuneration that would accrued for the contractual use within the minimum contract period applicable to this service. The customer retains the right to prove that the he is not responsible for the unauthorized use or that there is no or substantially less damage. The provider remains entitled to claim further loss.

7. Issue management

- 7.1 The provider will receive customer's issue reports, assign them to the agreed issue categories (Section 7.3) and use this assignment to carry out the agreed measures for the analysis and correction of issues.
- 7.2 The provider will receive customer's properly prepared issue reports during his normal business hours and label each with a case identifier. If requested by the customer, the provider confirms receipt of an issue report upon notification of the assigned identifier.

7.3 Unless otherwise agreed, the provider will assign received issue reports to one of the following categories after the first review:

a) Serious issue

The malfunction is based on a fault in the contractual services which makes it impossible to use the contractual service, particularly the software, or allows only use with serious restrictions. The customer can not handle this problem in a reasonable way and therefore can not perform urgent tasks.

b) Miscellaneous issue

The disturbance is based on a deficiency in the contractual services that makes it impossible for the customer to use the contractual services, particularly the software, in more than an insignificant way without an existence of a serious issue.

c) Miscellaneous report

Issue reports that do not fall into categories a) and b) are assigned to miscellaneous reports. Miscellaneous reports will only be handled by the provider in accordance with the agreements made.

7.4 In the case of reports concerning serious and miscellaneous issues, the provider shall immediately initiate appropriate measures based on the circumstances reported by the customer in order to first locate the cause of the issue.

If after the initial analysis, the reported issue does not appear to be a deficiency of the contractual services, particularly the software provided, the provider shall inform the customer immediately.

Otherwise, the provider will initiate appropriate measures for the further analysis and correction of the reported issue or, in the case of third-party software, forward the issue report together with its analysis results to the distributor or manufacturer of the third-party software with the request for corrective action.

The provider shall immediately provide available measures for the customer for the circumvention or correction of a defect in the contractual services, particularly the software provided, such as instructions or corrections to the software provided. The customer shall immediately undertake such measures for the circumvention or correction of disturbances without delay and immediately inform the provider about any remaining issues during the use.

8. Contact point (Hotline)

8.1 Contractual services

The provider shall set up a contact point for the customer (hotline). This office shall handle the customer's inquiries related to the technical operating requirements and conditions for use of the provided software as well as to individual functional aspects.

8.2 Acceptance and processing of inquiries

Prerequisite for the acceptance and processing of inquiries is that the customer designates for the provider appropriate functionally and technically qualified personnel who are tasked to handle users' inquiries of the supplied software internally at the customer. The customer is obliged to address inquiries to the hotline only via the person named by the supplier and to use forms provided by the provider. The hotline accepts such requests by e-mail, fax and telephone during the provider's usual business hours.

The hotline will process proper inquiries in the usual course of business and answer if possible. The hotline may refer to available documentation and other training resources for the software provided. If it is not possible for the hotline to answer the question or not answer fast enough, the provider shall - if this is expressly agreed - forward the request for processing, in particular inquiries to software not made by him.

Further hotline services, such as other response times and deadlines as well as on-call service or on-site assignments of the provider at the customer's premises must be agreed in advance.

9. Contract duration and contract termination

- 9.1 The performance of the contractually agreed services will be carried out from the date specified in the contract, initially for the duration of the contractually agreed duration. During this minimum duration, early termination is mutually exclusive.
- 9.2 The contract may be terminated upon three months' notice, at the earliest at the end of the minimum duration. If this does not happen, the contract will be renewed for a further year unless it has been properly terminated with a three months' notice as at the end of the particular renewal period.
- 9.3 The right of either contracting party to extraordinary termination for important reason remains unaffected.
- 9.4 To be valid, any termination declaration must be in writing. Section 8.4 of Bitkom applies.
- 9.5 The customer shall back up the customer's data in timely fashion before the end of the contract (such as through download). Upon request, the provider will assist the customer with this. Section 4-3 of AV Bitkom applies. For reasons of contract data processing, the customer will no longer have the option to access these data after the end of the contract.

10. Validity of the AV Bitkom

In addition, the General Terms and Conditions of Bitkom (AV Bitkom) apply.