



# General Terms and Conditions

## Software maintenance (business customers).

### 1 Parties to the agreement

The agreement is concluded between Telekom Deutschland GmbH (hereinafter referred to as Telekom), Landgrabenweg 151, 53227 Bonn, Germany (registered with Bonn District Court HRB 5919) and the customer who is not a consumer as defined in § 13 of the German Civil Code (BGB).

### 2 Subject matter of the agreement

- 2.1 The subject matter of the agreement is specified in these General Terms and Conditions and the relevant Service Specifications and Price Lists. These set forth the terms governing maintenance services for the latest version of the standard software agreed on as the maintenance object.
- 2.2 Diverging provisions shall be made in writing. The provision of a guarantee for specific characteristics (condition) shall require written confirmation by Telekom in order to be valid.
- 2.3 The customer's general terms and conditions shall not become a part of the agreement, even if they are attached to requests for proposals, orders, acceptance declarations, etc. and if no objection is made.

### 3 Agreements and proposals

- 3.1 Unless otherwise stipulated by a separate arrangement, the agreement shall be deemed established upon receipt of the order confirmation, or upon provision of the service by Telekom at the latest.
- 3.2 Dates or deadlines for the delivery of goods and the performance of services stipulated in agreements shall be binding only if they were designated as such in writing by Telekom.
- 3.3 All offers by Telekom are subject to change, unless explicitly stated otherwise in the offer.

### 4 Services provided by Telekom

- 4.1 The type and scope of the mutual services shall be regulated by the following contractual arrangements.
  - a) Service Specifications
  - b) These General Terms and Conditions
  - c) Generally accepted directives and technical normsIn the event of any discrepancies, the contractual arrangements shall apply in the order stated above.
- 4.2. Elimination of defects
  - 4.2.1 Telekom shall eliminate defects in the programs and program documentation. When used in accordance with the agreement, the programs must provide the services specified in the Service Specifications. To the extent that Telekom is not the software licensor, the customer and Telekom shall determine the status of the software, prior to the start of the maintenance agreement, in the form of a status report that shall serve as the basis for subsequent fault detection.
  - 4.2.2 To the extent specified in the agreement, Telekom shall provide the customer with certain new releases of the maintenance software in order to keep the latter up to date and to prevent faults. For this purpose, Telekom shall provide the customer with updates of the maintenance software containing technical modifications and improvements as well as minor functional enhancements and improvements. Also for this purpose, Telekom shall provide the customer with patches containing corrections to the maintenance software and other measures to work around possible faults.
  - 4.2.3 The scope of service shall not include the provision of upgrades involving major functional enhancements or any changes required by law that can be made only by partially or completely reprogramming the software to be maintained. In this event, Telekom shall have the right to demand reasonable additional payment upon prior written notification. If the customer refuses to

give its written consent thereto, Telekom shall have the right to terminate the agreement for good cause.

### 4.3 Consulting

Telekom shall provide the customer with consulting services in connection with the technical requirements and conditions for using the maintenance software as well as individual functional aspects. These services shall be provided during normal business hours of Telekom and to the extent possible. Telekom may refer to the maintenance software documentation provided to the customer in answering inquiries. Further services, such as other contact times and periods as well as an on-call service or deployment of Telekom personnel to the customer's premises must be agreed on expressly in advance.

- 4.4 Telekom shall be entitled to provide the services by subcontracting work to third parties (subcontractors). Telekom shall be liable for services provided by subcontractors to the same extent that it is liable for its own actions.

### 5 The customer's duties and obligations

- 5.1 Telekom and its vicarious agents [*Erfüllungsgehilfen*] shall be indemnified against all claims by third parties that are based on the illegal use of the software and the services connected therewith by the customer or with the customer's consent, or which arise, in particular, from litigation involving data protection, copyright, or other laws in conjunction with the use of the software. The customer shall notify Telekom in writing without undue delay if third parties claim that it has violated their rights. The customer shall not recognize any violation of rights claimed by third parties and either have any and all disputes handled by Telekom or handle such disputes only in agreement with Telekom.
- 5.2 Copyright notices, serial numbers and any other features that serve to identify the program may under no circumstances be removed or modified. The same applies to preventing such features from being displayed on screen.
- 5.3 The customer shall ensure that all items and services it is required to contribute are provided in good time, in the required scope, and free of charge for Telekom.
- 5.4 The customer shall give Telekom employees all support they require for their work at the customer's location. As part of this support, the customer shall
  - ensure that a qualified employee is available for support at the place of performance;
  - ensure that the employees assigned by Telekom are granted free access to the relevant computer and software at the agreed time;
  - ensure that items provided by the customer comply with work safety regulations for the benefit of Telekom employees;
  - provide Telekom employees in good time with the information that they need for their activities;
  - provide Telekom employees with adequate and appropriate work space, including tools and materials, where they are required to work at the customer's premises to fulfill the agreement.
- 5.5 In order for the fault to be properly cleared,
  - the fault must be adequately described by the customer and also be identifiable by Telekom;
  - detected faults must be reported in the specified form via a fault report;
  - the documentation required for fault clearance must be made available to Telekom for inspection;
  - the customer must not have altered or tampered with the software;
  - the software must be operated under proper conditions in accordance with the documentation.
- 5.6 Data media provided by the customer must be flawless both

technically and in terms of content. If this is not the case, the customer shall compensate Telekom for any and all damage arising from the use of such data media and shall indemnify Telekom and hold it harmless from any claims by third parties.

- 5.7 If the customer does not contribute to the services to the extent necessary or not in good time or in the agreed manner, the customer shall bear any consequences resulting therefrom (such as delays, added cost).

## 6 Rights of use

- 6.1 The customer's rights to use the new versions and any corrections to the maintenance software correspond to its rights to use the previous version of the maintenance software. With regard to the rights of use, the rights to the new versions and other corrections shall replace the rights to the previous versions and other corrections following a reasonable transition period – which usually does not exceed one month. The customer may archive a copy.
- 6.2 The customer may create a full copy of the new version and corrections for backup purposes. The customer shall mark this copy as a backup copy and provide it with the copyright notice of the original data carrier. Beyond this, the customer shall have no right to copy the software.

## 7 Reservation of ownership

- 7.1 Telekom shall retain ownership of, and rights to be granted to, the services until the amount owed has been paid in full. Until this time, the rights shall always be preliminary rights and may be withdrawn by Telekom at its discretion.
- 7.2 If Telekom asserts reservation of ownership, the customer's right to further use the software shall lapse. All program copies made by the customer must be deleted.

## 8 Compensation and due date

- 8.1 Telekom shall have the right to adjust its prices to general list prices every calendar year. A price increase of more than 5 % shall be agreed in writing by the parties. If they are unable to reach an agreement, the two parties shall be entitled to extraordinary termination of the agreement with effect from the date for which a price increase was demanded.
- 8.2 Compensation and ancillary costs are, in principle, net prices plus any applicable statutory taxes and duties.
- 8.3 The agreed compensation shall be due and payable in advance as an annual lump sum for twelve months. The billing period shall be January 1 to December 31 of any one year. Billing shall be on January 1 of any one year.
- 8.4 The amount due shall be paid to the account indicated on the bill. It shall be credited to the account within ten days after receipt of the bill. In the event that the customer furnishes a SEPA direct debit mandate, Telekom shall not debit the agreed account with the billed amount until the seventh day following receipt of the invoice and the SEPA Pre-notification.
- 8.5 The customer may only offset undisputed counterclaims or counterclaims that have become res judicata. The customer shall only be entitled to assert a right of retention for counterclaims arising from this agreement.
- 8.6 For any direct debit not honored or returned, the customer shall reimburse Telekom for the costs it incurred to the extent that the customer was responsible for the event giving rise to the costs.

## 9 Objections

Any objections to the amount of the prices of Telekom shall be lodged with Telekom immediately after receipt of the bill. Telekom must receive objections within eight weeks after receipt of the bill. If the customer fails to raise objections in time, the bill shall be deemed accepted; Telekom shall make specific reference in the bills to the consequences of failing to raise an objection in time. This stipulation shall be without prejudice to any legal claims the customer has in the case of objections filed after the deadline.

## 10 Changes in General Terms and Conditions, Service Specifications and Prices

Telekom shall have the right to change the General Terms and Conditions, the Service Specifications or the prices within a suitable notice period, provided that the change is reasonably acceptable to the customer, taking Telekom's interests into account. The customer shall be notified of the change in writing.

If changes are made to the customer's detriment, the customer shall have a special right of termination from the time the change goes into effect. In its change notice, Telekom shall bring the customer's attention to this special termination right as well as to the fact that the change will go into effect unless the customer exercises its special termination right within the specified period.

## 11 Default

- 11.1 If the customer defaults on payment with a more than insignificant amount due, Telekom shall be entitled to discontinue the maintenance services. In this case, the customer shall still be required to pay the monthly charges.
- 11.2 If the customer defaults on the payment of the charges, or a more than insignificant part thereof, for two consecutive months, Telekom may terminate the agreement without notice.
- 11.3 Telekom reserves the right to assert any other claims arising from a default in payment.

## 12 Warranty

- 12.1 Elimination of defects  
If the defect elimination service rendered (Item 4.2) is defective so as to impair contractual use thereof to a more than insignificant extent, the customer shall have the right to demand that Telekom, at its own choice, either make subsequent improvements or provide the service again (subsequent performance [*Nach-erfüllung*]). If the customer has set a reasonable grace period for Telekom after an initial demand for action, and Telekom has refused to effect subsequent performance, or if subsequent performance is unsuccessful, the customer shall – with regard to the elimination of defects – have the right to demand either rescission of the agreement or reduction of the compensation. If the deviation of the service from the agreed condition is insignificant and does not limit its serviceability, the customer may only demand a reduction of the compensation.
- 12.2 Consulting  
If the consulting service rendered (Items 4.3) is defective so as to impair its contractual use to a more than insignificant extent, the customer may initially only demand subsequent performance from Telekom within a reasonable period of time. If an attempt to effect subsequent performance is unsuccessful or if Telekom has refused to effect subsequent performance, the customer may, at its own choice, either cancel the consulting service without notice or demand a reduction in the monthly compensation. The subsequent performance shall be deemed failed after the second unsuccessful attempt, unless a different arrangement is reached, in particular as a result of the type of the goods or services or the defect or other circumstances. If the deviation of the service is insignificant, the customer may only demand a reduction in the compensation.
- 12.3 If Telekom has provided services to detect a fault after a problem was reported, and if no defect in quality [*Sachmangel*] is found, the customer shall bear the costs resulting therefrom. In calculating the costs, Telekom shall use the rates of remuneration valid at the time of service.
- 12.4 The liability for defects in quality shall not apply to services provided by Telekom that have been modified or otherwise interfered with by the customer, unless the customer proves that the intervention did not cause the defect. The liability for defects in quality shall also not apply if the customer fails to report the defect to Telekom in writing without undue delay after it becomes apparent, or if the service is not used under the contractually agreed conditions as stipulated in the documentation.
- 12.5 Claims of the customer arising from necessary expenses incurred for the purpose of subsequent performance – in particular, the cost of transportation, labor and materials – shall be precluded hereby to the extent that the expenses are increased by the fact that the service was provided at a place of performance other than the one stipulated in the agreement.
- 12.6 The customer shall be entitled to warranty claims against Telekom pursuant to Item 12.1 and 12.2 for one year from acceptance of the service.  
This restriction shall not apply to compensation claims that are based on the violation by Telekom of claims to subsequent performance in the event of defects. Compensation claims based on refusal to provide subsequent performance may only be asserted within the statutory period of limitation if the claim to subsequent performance is asserted by the customer within the

reduced period for material defect claims.

### 13 Defect in title [*Rechtsmangel*]

- 13.1 In the provision of new versions, a defect in title shall exist if the rights required to use the software as provided by the agreement have not been effectively granted after the software is handed over. In the event of defects in title, Telekom shall honor its warranty, at its own choice, by providing the customer with a legally unobjectionable way to use the software or by taking back the software at the billed price minus a reasonable compensation for usage. The latter shall be permissible only if Telekom cannot be reasonably expected to provide a different remedy.
- 13.2 Claims of the customer arising from a defect in title shall be subject to a limitation period of one year from the commencement of the statutory limitation period.

### 14 Liability

- 14.1 Telekom shall be fully liable in cases of intent, gross negligence or the lack of a guaranteed feature.
- 14.2 In the event of slight negligence, Telekom shall be fully liable in the case of injury to life, limb or health. In all other respects, in case of slight negligence, Telekom shall only be liable insofar as a duty is neglected which is prerequisite to proper implementation of the agreement, by the breach of which attainment of the goals of the agreement is compromised and which the customer may routinely expect to be honored (hereinafter referred to as "cardinal obligation"). In the event of breach of a cardinal obligation, liability shall be limited to the typical damage expected under the agreement. This shall also apply to lost profit and unachieved savings. Liability for any less direct consequential damage due to defects shall be precluded.
- 14.3 Telekom shall be liable for the loss of data in the case of slight negligence under the conditions and within the scope of Item 14.2 only if the customer has performed a daily backup of his data.
- 14.4 Telekom shall not be liable for any other damage, in particular for data loss or hardware faults caused by incompatibility between the components already present in the customer's PC system and the new or modified hardware and software, or for system malfunctions that may result from existing configuration errors or older, interfering drivers that were not completely removed. Liability in accordance with the German Product Liability Act [Produkthaftungsgesetz] shall be unaffected.

### 15 Term and termination

If the agreement provides for no specific term of the agreement, each party may terminate the agreement by giving three months' notice, effective from the end of a calendar quarter. Notice must be given in writing.

### 16 Export

The customer shall observe, on its own responsibility, the import and export regulations to be applied to the products or services provided, in particular the regulations of the United States of America. The customer shall pay any customs duties, fees and other charges that are incurred for the cross-border delivery of products and services. The customer shall carry out all legal and administrative procedures in connection with the cross-border delivery of products or services on its own responsibility.

### 17 Confidentiality

The parties shall be obligated toward each other for an unlimited period of time to treat as confidential any business and trade secrets as well as any details specified as being confidential that become known to them in connection with the performance of the agreement. Information may be divulged to third parties not involved in carrying out the order only with the prior written consent of the other party. Affiliated companies of the parties to the agreement as defined by Section 15 et seq. of the German Stock Corporation Act [*Aktiengesetz – AktG*] are not third parties. The parties to the agreement shall also require their employees and any third parties involved to accept these obligations. Telekom shall be authorized to pass confidential information on to subcontractors if the latter have undertaken to maintain secrecy in this respect.

### 18 Force majeure

- 18.1 Telekom shall not be liable for occurrences of force majeure that significantly hinder proper contractual performance or temporarily hamper or render impossible the due performance of the agreement by Telekom. Force majeure shall be deemed to include all circumstances that are independent of the intention and influence of the parties, such as natural disasters, governmental measures, decisions by authorities, blockades, war and other military conflicts, mobilization, internal unrest, terrorist attacks, strikes, lockouts and other work-related unrest, confiscation, embargoes or other circumstances that are unpredictable, serious and not due to the parties' fault and that occur following the conclusion of this agreement.
- 18.2 If one of the parties is prevented from fulfilling its contractual obligations due to force majeure, this shall not be considered to be a violation of the agreement, and the periods set out in the agreement or on the basis of the agreement shall be extended reasonably, depending on the duration of the impediment. The same shall apply if Telekom depends on the service of a third party, and this service is delayed as a result of force majeure.
- 18.3 Each party shall undertake all necessary and reasonable actions within its control in order to limit the extent of the consequences which were caused by the force majeure. The party affected by force majeure shall in each case notify the other party in writing of the beginning and end of the impediment without undue delay.

### 19 Miscellaneous

- 19.1 If any provisions of the agreement are or become invalid or if a lacuna becomes evident, this will not affect the validity of the remaining provisions. In place of the invalid provisions, or to fill the lacuna, a commensurate provision shall be introduced that comes as close as possible to what the parties may be presumed to have intended according to the spirit and purpose of the agreement.
- 19.2 The place of jurisdiction for all disputes arising from or in connection with this agreement shall be Bonn. Any exclusive place of jurisdiction shall have priority.
- 19.3 The customer shall not be entitled to transfer any rights and obligations under this agreement to a third party unless with the prior written consent of Telekom.
- 19.4 The contractual relations between the parties shall be subject to German law to the exclusion of the UN Convention on Contracts for the International Sale of Goods.