

Bitkom's contractual terms for use of software via the Internet (software as a service)

-SaaS Bitkom-

(SaaS Bitkom, Version 3.0)

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1. Subject matter of the contract

1.1 The provider supplies the contractual services, in particular, access to software, in their area of disposition (from the data processing centre's interface to the Internet). The scope, nature, purpose and conditions of use of the contractual services are determined by the respective service description, in addition to the software's operating manual.

1.2 Further services such as development of customer-specific solutions or necessary adaptations require a separate contract.

1.3 The provider supply updated versions of software.

The provider shall inform customers about updated versions and corresponding instructions on use electronically, and make these accordingly available.

2. Scope of use

2.1 Contractual services may only be used by the customer and only for the purposes agreed in the contract. For the duration of the contract, the customer may access the contractual services by means of telecommunication (via the Internet), and use the functionality associated with the software in a contractually compliant manner by means of a browser or other appropriate application (for example, an "app"). The customer does not receive any further rights, in particular, pertaining to software or any provided infrastructure services at the respective data processing centre. Any further use requires the provider's prior written approval.

2.2 The customer must, in particular, not use the software beyond the agreed scope of utilization, or allow third parties to use or access the software. In particular, software or parts thereof must not be copied, sold, transferred temporarily, leased or loaned by the customer.

2.3 The provider is authorized to take appropriate technical measures to prevent non-contractual use. This must not significantly impair contractually compliant use of the services.

2.4 If a user exceeds the scope of utilization or an unauthorized transfer of use takes place in breach of the contract, the customer, on request, shall immediately supply the provider with all available information for assertion of claims due to the non-contractual use including, in particular, the user's name and address.

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- 2.5** The provider may withdraw the customer's right of access and/or cancel the contract if the customer substantially exceeds their authorized scope of use or breaches regulations for preventing unauthorized use. In this context, the provider can interrupt or block access to the contractual services. Beforehand, the provider must always set a reasonable grace period of remedy for the customer. Sole revocation of access authorization does not simultaneously constitute cancellation of the contract. Revocation of access authorization without notice can be upheld by the provider only for a reasonable period of time not exceeding 3 months.
- 2.6** The provider's entitlement to remuneration for use above and beyond the agreed scope remains unaffected.
- 2.7** The customer is entitled to renewed granting of access authorization and access options after proving that they have ceased non-contractual use and prevented further non-contractual use.

3. Availability, defective services

- 3.1** Availability of provided services is determined by the service description.
- 3.2** Just a minor reduction in a service's suitability for contractual use shall not give rise to claims by the customer regarding defects. Strict liability of the provider regarding defects already existent at the time of contract conclusion is ruled out.
- 3.3** Section 578b German Civil Code remains unaffected.

4. Data protection

- 4.1** To the extent that the provider can access personal data belonging to the customer or present in their domain, said provider shall act exclusively as a processor and only process and use these data to execute the contract. The provider shall observe the customer's instructions on handling such data. The customer shall bear any negative consequences of such instructions for contract execution. The customer and provider shall agree details on handling of the customer's data by the provider in accordance with legal requirements concerning data protection.
- 4.2** The customer remains the data controller generally in the contractual relationship and in the context of data protection legislation. If the customer processes personal data in connection with the contract (including collection and use), said customer assures that they are entitled to this according to the applicable provisions, in particular, those concerning data protection, and exempts the provider from claims by third parties in the event of a breach.

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4.3 The following applies to the relationship between the provider and customer: The customer is responsible for processing (including collection and use) of personal data vis-à-vis the data subject, unless the provider is answerable to any claims by the data subject as regards breaches of duty attributable to them. The customer shall review, process and answer any enquiries, requests and claims by the data subject. This also applies to claims raised by the data subject against the provider. The provider shall support the customer as part of their duties.

4.4 The provider guarantees that the customer's data are saved exclusively in the territory of the Federal Republic of Germany, or a member state of the European Union, or another state party to the agreement on the European Economic Area, unless agreed otherwise.

5. Customer's obligations

5.1 The customer shall protect the access rights as well as identification and authentication details assigned to said customer and users against access by third parties, and not relay these details to unauthorized parties.

5.2 The customer is obliged to exempt the provider from all claims of third parties due to legal breaches which are either based on the customer's unlawful use of the subject matter of the contract, or which occur with their consent. If the customer recognizes or must recognize that such a breach is imminent, they are obliged to immediately inform the provider.

5.3 The customer shall utilize the opportunities made available by the provider for securing their data in their original sphere of responsibility.

6. Non-contractual use, damage compensation

For each case involving unauthorized use of a contractual service in the customer's area of responsibility, the customer shall pay damage compensation equal to the remuneration which would have been due for contractually compliant use over the minimum contractual period applicable to this service. Proof that the customer is not responsible for unauthorized use, or that damage is either absent or much less significant, remains reserved for the customer. The provider remains entitled to assert further damage claims.

7. Malfunction management

7.1 The provider shall receive the customer's reports of malfunctions, classify the malfunctions into agreed categories (Item 7.3) and use this classification to implement the agreed measures to analyze and remedy the malfunctions.

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7.2 The provider shall receive the customer's reports of malfunctions during said provider's normal business hours and assign an ID to each report. On request by the customer, the provider shall confirm receipt of a malfunction report with a notification of the ID assigned to it.

7.3 Unless agreed otherwise, the provider shall classify received malfunction reports after an initial inspection into one of the following categories:

a) Serious malfunction

The malfunction is based on a fault which has occurred in the contractual services so as to make use of these services, especially pertaining to software, impossible or possible only with significant limitations. The customer cannot circumvent this problem in a reasonable manner, and is therefore unable to complete urgent jobs.

b) Other malfunction

The malfunction is based on a fault which has occurred in contractual services so as to limit the customer's use of these services, especially pertaining to software, more than just insignificantly, without there being a serious malfunction.

c) Other report

Malfunction reports which do not fall into category a) or b) are assigned to the category of other reports. Other reports are handled by the provider only in accordance with the agreements reached in this regard.

7.4 In the case of reports about serious malfunctions and other malfunctions, the provider shall promptly initiate relevant measures according to the circumstances reported by the customer, in order to first localize the cause of the malfunction.

If a reported malfunction does not turn out to be a fault in the contractual services, especially the supplied software, after initial analysis, the provider shall promptly inform the customer about this.

Otherwise the provider shall initiate appropriate measures to further analyze and correct the reported malfunction or - in the case of third-party software - send the malfunction report including their analysis results to the distributor or manufacturer of the third-party software with a request for remedy.

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To circumvent or remedy a fault in contractual services, especially the supplied software, the provider shall promptly supply the customer with available measures such as procedural instructions or corrections to the supplied software. The customer shall promptly implement such measures to circumvent or remedy malfunctions, and promptly notify the provider again of any remaining malfunctions when deploying the measures.

8. Contact point (hotline)

8.1 Contractual services

The provider shall set up a contact point (hotline) for the customer. This point of contact processes the customer's inquiries in connection with technical requirements and conditions for use of the supplied software, as well as individual functional aspects.

8.2 Receipt and processing of inquiries

As a prerequisite for receipt and processing of inquiries, the customer is to announce an appointment of expert and technically qualified staff to the provider, and assign these staff to internally process inquiries from users of the maintained software. The customer is obliged to submit inquiries to the hotline only via these staff members appointed for communicating with the provider, using the forms supplied by the provider for this purpose. The hotline receives such inquiries via e-mail, fax, and telephone during the provider's normal business hours.

The hotline shall process proper inquiries as part of normal business routine and answer them as far as possible. In its responses, the hotline can refer the customer to available documentation and other training material for the supplied software. If the hotline is not able to answer an inquiry at all or in a timely fashion, the provider - if this is expressly agreed - shall forward the inquiry for processing, especially in the case of inquiries regarding software not developed by said provider.

Other hotline services such as further contact hours and periods as well as on-call service or the provider's deployment on-site at the customer's premises must be expressly agreed in advance.

9. Contract duration and termination

9.1 The contractually agreed services shall be provided from the date specified in the contract, initially for the duration specified in the contract. During this minimum term, premature ordinary termination is ruled out for both parties.

9.2 The contract may be terminated with a notice period of three months, at the earliest on expiry of the minimum term. If this does not take place, the contract shall be extended by one more year, unless it was terminated ordinarily with a notice period of 3 months before expiry of the respective extension period.

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- 9.3** Each contractual partner's right to extraordinary termination for important reasons remains unaffected.
- 9.4** Every declaration of termination must be in writing to be effective. Item 8.4 of 'AV Bitkom' applies here.
- 9.5** Before termination of the contract, the customer will back up their data inventory (e.g. via download) under their own responsibility and in a timely manner. On request, the provider will support the customer in this process, Item 4.3 of 'AV Bitkom' being applicable here. Already for reasons pertaining to data protection legislation, the customer will no longer be able to regularly access such data after termination of the contract.

10. Validity of 'AV Bitkom'

Bitkom's general contractual terms (document titled 'AV Bitkom') apply additionally.

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