

# CONTRACTUAL TERMS FOR MAINTAINING STANDARD SOFTWARE

- STACKFORCE GMBH -

## 1 SUBJECT MATTER OF THE CONTRACT

### 1.1 ITEMS REQUIRING MAINTENANCE

STACKFORCE GmbH renders the agreed maintenance services only for the respective, current versions of the standard software agreed as items requiring maintenance ("maintained software") in exchange for the agreed remuneration. If third-party software is expressly agreed as maintained software in the contract, the restrictions described there apply to it.

STACKFORCE GmbH shall render the following maintenance services to the extent agreed:

### 1.2 MALFUNCTION MANAGEMENT

#### 1.2.1 Receipt of messages concerning malfunctions

During their regular business hours according to Item 9 of the General Terms and Conditions (GTC), STACKFORCE GmbH shall receive the customer's malfunction reports, furnish each with an ID, classify the malfunctions into agreed categories and use this classification to execute the agreed measures to analyze and remedy the malfunctions. Item 2.4 of the GTC applies to malfunction reports. On request by the customer, STACKFORCE GmbH shall confirm receipt of a malfunction report with a notification of the ID assigned to it.

Malfunction management does not include any services concerning a use of maintained software in unapproved operating environments, or modifications to maintained software by the customer or third parties.

#### 1.2.2 Classification into malfunction categories

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

##### a) Serious malfunction

The malfunction is based on an error which has occurred in the maintained software so as to make use of the 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 an error which has occurred in the maintained software so as to limit the customer's use of the 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 STACKFORCE GmbH only in accordance with the agreements reached in this regard.

### 1.2.3 Execution of measures to eliminate malfunctions

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

If the reported malfunction does not turn out to be an error in the maintained software after initial analysis, STACKFORCE GmbH shall promptly inform the customer about this.

Otherwise STACKFORCE GmbH 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 maintained software with a request for remedy.

To circumvent or remedy errors in maintained software, STACKFORCE GmbH shall promptly supply the customer with available measures such as procedural instructions or corrections to the maintained software. The customer shall promptly take over such measures to circumvent or remedy malfunctions, and promptly notify STACKFORCE GmbH again of any remaining malfunctions when executing the measures.

## 1.3 TRANSFER OF NEW VERSIONS

### 1.3.1 Contractual services

STACKFORCE GmbH shall transfer to the customer certain new versions of the maintained software in order to keep it updated and prevent malfunctions. These updates of the maintained software include technical modifications, improvements, minor functional extensions, as well as patches comprising corrections to the maintained software or other preventive measures for possible malfunctions. These updates of the maintained software are collectively termed "new versions".

Not included in maintenance services is a transfer of upgrades comprising significant functional extensions, or new products or obligations to further develop the maintained software, unless expressly agreed otherwise.

### 1.3.2 Rights and obligations for new versions

STACKFORCE GmbH shall supply the customer with new versions of the software. The customer shall promptly inspect new versions and promptly object if there are any recognizable defects, § 377 of the German commercial Code applying accordingly here.

Malfunctions and defects are handled as set forth in Item 1.2. Items 2.4 and 4.1 of the GTC apply additionally.

If the customer is entitled to claims due to defects, said customer initially only has a right to supplementary performance within a reasonable period. Supplementary performance includes, at STACKFORCE GmbH's discretion, either remedy or delivery of replacement software. The customer's interests are to be considered adequately in the choice.

The customer shall enable installation and removal for STACKFORCE GmbH in the scope of supplementary performance, unless this is unreasonable for the customer. Before taking own measures to remedy defects, the customer shall consult STACKFORCE GmbH.

Any entitlement of the customer's to reimbursement of expenditure is limited to a reasonable extent, taking into consideration the value of the relevant performance in faultless condition and the significance of the defect.

For new versions of third-party software, the guarantee provisions of the transfer contract between the customer and STACKFORCE GmbH apply as a priority to this third-party software, unless agreed otherwise. § 475a of the German Civil Code remains unaffected.

## 1.4 CONTACT POINT

### 1.4.1 Contractual services

STACKFORCE GmbH shall set up a contact point for the customer. This point of contact processes the customer's inquiries in connection with technical requirements and conditions for use of the maintained software, as well as individual functional aspects. Item 1.2.1 applies.

The contact point does not provide services relating to a use of maintained software in unapproved operating environments, or modifications to maintained software by the customer or third parties.

### 1.4.2 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 STACKFORCE GmbH, and assign these staff to internally process inquiries from users of the maintained software. The customer is obliged to submit inquiries to the contact point only via these staff members appointed for communicating with STACKFORCE GmbH, using the forms supplied by STACKFORCE GmbH for this purpose. The contact point receives such inquiries via e-mail

and telephone during STACKFORCE GmbH's normal business hours according to Item 9 of the GTC.

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

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

## 1.5 ADDITIONAL SERVICES (SUPPORT)

1.5.1 Services beyond the scope of Items 1.2 to 1.4 in general are not due under this contract, and instead require separate agreement and remuneration. This can involve, for example, additionally agreed deployments on-site at the customer's premises, consultation and support in the case of modified software, clarification of interfaces to extraneous systems, as well as support in installation and configuration.

### 1.5.2 Receipt of requests for support services

During their normal business hours according to Item 9 of the GTC, STACKFORCE GmbH will receive the customer's requests for contractually agreed support services, each given an identifier, initially rate them and, based on this assessment, report back to the customer with an initial support proposal. At the customer's request, STACKFORCE GmbH will confirm receipt of the request for support, stating the assigned identifier.

The support proposal also includes a cost estimate as well as a service period for the support, possible at the time of the feedback. This first evaluation corresponds to an effort of up to two working hours and is remunerated once at the agreed hourly rate, unless agreed otherwise.

### 1.5.3 Acceptance of the support proposal

If the customer accepts the support proposal and the associated cost estimate, STACKFORCE GmbH will provide support within the confirmed service period. If the customer informs STACKFORCE GmbH of the acceptance of the support proposal later than 48 hours after the submission, STACKFORCE GmbH may refuse support or, in consultation with the customer, adjust the service period.

### 1.5.4 Non-feasibility of the support proposal

If STACKFORCE GmbH determines during execution that the support and the envisaged solution are technically not feasible or not economical, STACKFORCE GmbH will inform

the customer immediately and submit an adjusted or new support proposal, same as an updated cost estimate.

This adjusted or new support proposal shall be accepted by the customer for execution in accordance with Item 1.5.3.

If the customer rejects the adjusted or new support proposal, all previous expenses are to be remunerated accordingly, and the customer accepts that the support may lead to an incomplete or no solution.

## 2 GENERAL PROVISIONS

The following provisions apply in equal measure to malfunction management (1.2), transfer of new versions (1.3) and the contact point (1.4).

### 2.1 DURATION

- 2.1.1 Unless agreed otherwise, the maintenance contract begins on delivery as set forth in the transfer contract for standard software.
- 2.1.2 After expiry of an agreed minimum duration, if applicable, the maintenance contract can be terminated in writing with a 3-month notice period by the end of a calendar year, but not before expiry of the calendar year following contract conclusion. Moreover, the contract can be terminated by STACKFORCE GmbH and customer for an important reason without observing a period of notice.
- 2.1.3 Notices of termination are only valid if they are in writing.

### 2.2 REMUNERATION

#### 2.2.1 Flat-rate remuneration

The customer shall remunerate maintenance services with an ongoing flat-fee. Remuneration for maintenance is owed in advance of an accounting period, and shall be invoiced by STACKFORCE GmbH to the customer at the beginning of the accounting period. The accounting period is essentially the calendar year. If the contract begins within an accounting period, remuneration is owed pro-rata and invoiced on contract conclusion.

#### 2.2.2 Remuneration of additional services

Additional services not covered by the flat-rate remuneration are compensated as set forth in Item 1.1 of the GTC.

#### 2.2.3 Adjustments to remuneration

STACKFORCE GmbH reserves the right to increase remuneration for the first time after 12 months, and at most once per year with a 3-month notice period, in accordance with the trend in the index of labour costs for the manufacturing and service industries. STACKFORCE GmbH can also pass on cost increases beyond this for third-party supply services, unless STACKFORCE GmbH has caused these cost increases. As soon as the

annual remuneration increases by more than 5%, the customer is authorized to terminate the contract by the time the increase takes effect, within a period of six weeks after receipt of the demand for increase. If relevant costs are reduced, the customer can also request a corresponding reduction in remuneration, for the first time after 12 months.

## 2.3 RIGHT OF USE

The customer's rights to use new versions and other corrections to maintained software correspond to their rights to use the previous versions of the maintained software. With regard to such rights, the rights to use new versions and other corrections supersede the rights to the previous versions and other corrections after an appropriate transitional period - generally not more than one month. The customer may archive a duplicated copy.

## 2.4 CUSTOMER'S OBLIGATIONS

- 2.4.1 The customer shall promptly notify STACKFORCE GmbH about changes in the operating environment, also to enable STACKFORCE GmbH to render the maintenance services. Moreover, the customer shall ensure that maintenance software is used only in an operating environment which is approved and supported by the software. STACKFORCE GmbH is not liable for maintaining software not used in this kind of environment.
- 2.4.2 Unless agreed otherwise, the customer shall additionally store, at their premises, all documents, information and data submitted to STACKFORCE GmbH in such a way that these can be reconstructed in the event of damage and loss of data carriers.

## 2.5 TRANSFER

If software is transferred within the scope of these conditions, this shall be done using the same procedure as that for transferring maintained software, unless agreed otherwise.

## 2.6 DATA PROTECTION

- 2.6.1 To the extent that STACKFORCE GmbH can access personal data belonging to the customer or present in their domain, STACKFORCE GmbH shall act exclusively as a processor and only process and use these data to execute the contract. STACKFORCE GmbH 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 STACKFORCE GmbH shall agree details on handling of the customer's data by STACKFORCE GmbH in accordance with legal requirements concerning data protection.
- 2.6.2 The customer remains the data controller generally in the contractual relationship and in the context of data protection legislation. The following applies to the relationship between STACKFORCE GmbH and customer: The customer is responsible for processing (including collection and use) of personal data vis-a-vis the data subject, unless STACKFORCE GmbH 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 STACKFORCE GmbH. STACKFORCE GmbH shall support the customer as part of their duties.

- 2.6.3 STACKFORCE GmbH guarantees that the customer's data are processed 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.

## 2.7 VALIDITY OF GENERAL TERMS AND CONDITIONS

STACKFORCE GmbH's General Terms and Conditions (GTC) apply additionally.

■ This document is a courtesy translation. The German version of these terms shall be the legally binding version.

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