

Contractual conditions for NETWAYS GmbH and NETWAYS Professional Services GmbH support contracts

§1 Scope of Application

1. NETWAYS GmbH and NETWAYS Professional Services GmbH (hereinafter referred to as Contractor) offer various support services for customers and companies in the area of bug fixing of open source software within the framework of support contracts.
2. Various types of assistance are offered within the framework of this activity, such as telephone support, remote support via the Internet or on-site service. This is done either through individual orders or through a permanent service contract.
3. Support services of the Contractor under this contract are provided exclusively under the following contractual conditions and the provisions of the respective valid price lists, unless otherwise agreed in writing.
4. General terms and conditions of the client shall not apply even if the client refers to them in connection with its order or assignment and the contractor does not object to them. Commitments and subsidiary agreements as well as changes or additions must be made in writing. This also applies to the change of the written form requirement.

§2 Conclusion of Contract

1. The client must send the order form or offer, completed and signed, to the Contractor by post or fax. Herein lies the offer to conclude a support contract.
2. The support contract between the client and the Contractor is only concluded when the Contractor accepts the offer in writing.

§3 Obligations of the Client

1. The client shall provide the Contractor with all access data for the system to be supported, insofar as this is necessary. This data must be provided in accordance with the information in the order form or offer. The order will only be confirmed or carried out if the order form or offer is signed.
2. The client should make a data backup before the support services are started by the Contractor, as it is aware that a loss of data must be expected due to the support work. The Contractor will not independently make any data backups via a long-distance line.

§4 Support Request

On the basis of the concluded support contract, the client can send a support request to the Contractor by e-mail to support@netways.de or by web form. Other communication channels are not provided for under this support contract and are not covered by the performance of this support contract, in particular the agreed response times, time windows or fees. Exceptions to this are explicitly listed in the offer.

§5 Scope of the Contractor's Contractual Services

1. On the basis of the support contract, the Contractor is obliged to respond to a support request from the client within the contractually agreed response time, by telephone or e-mail, and to process it ("Services"). The scope of the individual services to be provided by the Contractor is conclusively regulated below.
2. Support requests should always be sent by e-mail to support@netways.de. Exceptions to this are explicitly listed in the offer.
3. After sending a support request by e-mail or web form, the client will receive a confirmation of receipt by e-mail with the ticket number to the sender address given in the request e-mail or web form.
4. Within the agreed response time, the Contractor will contact the client at the e-mail address provided in order to confirm the commencement of processing, to obtain further support-relevant information or to submit a proposed solution.
5. No guarantee or responsibility is given regarding the solvability of a problem.
6. The notification of a solution or the notification that a support request cannot be solved does not have to be made within the contractually agreed response time. The client has no claim to the observance of a solution or recovery time.

7. The Contractor's Services are limited to the support of concrete problems that arise in maintaining the operational capability of the supported software and the systems specified by the customer.
8. The Contractor's contractual Services are further limited to providing support for specific problems with the services, programs and packages resulting from the service description of the support contract.
9. Also excluded from the Contractor's Services is any programming work that goes beyond what is necessary to deal with the problem and maintain the system, as well as the development of complex IT concepts, feasibility studies and the like (consulting). Also excluded is the exclusive development and provision of specific software adaptations (patches) for the client.
10. The Contractor is entitled to provide support services to customer directly through its own employees or indirectly through agents of Contractor.

§6 Support Level and Response Time

1. The Contractor provides its services in different support levels, which are defined as follows:
 - a) 8x5: Monday to Friday from 9:30 to 17:30 German time, not on German and Bavarian holidays
 - b) 24x7: Monday to Sunday from 00:00 to 24:00
2. Response time is the time span between the receipt of the request, interrupted by times outside the agreed support level, and the response by the Contractor.
3. The response times are agreed individually and are listed in the offer.
4. The response times for the 24x7 support level apply outside business hours only for telephone support. For support requests via e-mail, the response times are only valid during the business hours mentioned in §6 No.1a.
5. Telephone support is only available outside business hours (outside 8x5) and is limited to assistance in emergencies. An emergency exists if a productive server or other business-critical systems are not available and no immediate repair of the fault is possible and these systems are covered by the support contract. In the case of highly available systems, an emergency exists when the entire system is no longer available. The failure of a single system without affecting the overall system does not constitute an emergency.
6. Additional charges may apply for telephone support outside business hours. The amount of the fees is listed in the respective offer.

§7 Support Quota

If a support contingent has been agreed in the contract, the following regulations apply:

1. The service description of the contract defines a support contingent for a calendar support period for the processing of the clients's inquiries, to which the maximum processing time is limited. As soon as the time quota in the interval in question has been used up, the Contractor will inform the client accordingly.
2. If the support contingent for the current support period is used up, further services during this support period will be charged additionally according to the agreed support hourly rate.
3. Unused time units expire without replacement at the end of the current support period and cannot be carried over, refunded or charged to the next support period.

§8 Remuneration and Mode of Payment

1. All prices are valid from the Contractor's place of business and are net prices in Euro, plus the statutory value added tax valid at the time of performance without further deductions.
2. The fee to be paid by the client for the support contract is due annually in advance, payable without deduction of discount, net cash. Exceptions to this are explicitly listed in the offer.
3. If the client is in default of payment, the Contractor may refuse to perform and demand interest on arrears at a rate of 8% above the base interest rate of § 247 BGB. The date of payment shall be the date of crediting to the Contractor's account. We reserve the right to assert claims for further damages.
4. If circumstances become known which, according to the dutiful commercial discretion of the Contractor, give rise to justified doubts about the creditworthiness of the client, including such facts which already existed at the time of conclusion of the contract but which were not known or need not have been known to the Contractor, the Contractor is entitled, without prejudice to further legal rights in these cases, to stop further work on current orders and to demand advance payments or the provision of securities acceptable to it for outstanding services and, after unsuccessful expiry of a reasonable period of grace for the provision of such securities, to withdraw from the contract and to demand compensation.

5. The client may only offset against such claims that are undisputed or have been legally established.

§9 Date of Performance

1. Compliance with the agreed response time is subject to the timely receipt of all documents to be supplied by the client as well as compliance with the agreed terms of payment and other obligations by the client. If these conditions are not fulfilled in time, the deadlines shall be extended accordingly; this shall not apply if the Contractor is responsible for the delay.

2. If non-observance of the time limits is due to force majeure, e.g. mobilization, war, riot or similar events, e.g. strike, lockout, official intervention, shortage of energy and raw materials, transport bottlenecks, operational impediments through no fault of our own, e.g. due to failure of the electricity supply, Internet disruptions, fire, water, damage to electronics, failure of telecommunications networks or computers and damage to machinery, the time limits shall be extended accordingly.

§10 Travel Costs and Expenses

For customers from Germany and Austria there are no additional costs for days agreed upon within a support contract. For customers from all other countries, appropriate travel costs and expenses will be charged.

§11 Term and Termination

1. The term of a support contract is twelve months, unless otherwise agreed in writing. It shall be extended by a further 12 months in each case if it is not terminated in writing with a period of notice of 3 months to expiry.

2. Extraordinary terminations can only be made for good cause, but then also without notice.

3. The Contractor has the right to terminate this agreement without notice if the user violates the terms of use or is in arrears with at least two payments due for more than 3 months.

4. This also applies if the arrears of payment relate to other contracts concluded with the Contractor. Such contracts may also be terminated for breach of contract under this Agreement.

§12 Data Protection

1. The client is responsible for backing up its data itself, unless this is expressly part of the Contractor's service. This includes in particular the backup of its data stocks to be maintained by the Contractor. If the Contractor creates a backup of the data for its own protection, no guarantee declaration or legal claim of the client to a proper execution arises from this. Such a self-created backup will be deleted immediately after completion of the work.

2. Insofar as the Contractor carries out administrative services for the client, the client must carry out a data backup before each announced access by the Contractor to the client's systems. The client is responsible for any damage caused by the lack of such data backup. This can only be deviated from if data backup is part of the Contractor's scope of duties.

§13 Mutual Obligations, Secrecy, Data Protection

1. The contracting parties mutually undertake to treat as confidential vis-à-vis third parties all information which they obtain directly or indirectly within the scope of this contractual relationship and which is designated as confidential, and to use such information only in connection with the performance of this contract. The contracting parties mutually assure each other that they will neither pass on this information to third parties nor make it available in any other form to third parties and that they will take all reasonable precautions to avoid access to this information by third parties.

2. The obligation of secrecy applies to all information which both parties to the contract or one of their employees has obtained or will obtain in connection with the performance of this contract, in particular

- a) Source code of individually created software, as well as the software itself
- b) Schedules, goals and ideas
- c) Any other non-public information obtained by a party in the performance of this Agreement about the other contractual party.

3. The confidentiality obligation under this Agreement also extends to all employees and agents of both contracting parties, regardless of the legal form of the cooperation. The contracting parties undertake to impose corresponding confidentiality obligations on this group of persons, insofar as this has not already been done.

4. The confidentiality obligations under this Agreement shall remain in force for 36 months after the termination of this Agreement. The confidentiality obligations under this Agreement do not or no longer exist if and to the extent that the information concerned can be proven to

- a) Be or have become generally known
- b) Become generally known without fault of a contractual party
- c) Be or have been legally obtained from a third party
- d) Already exist with one party
- e) Be made available to third parties by agreement.

§16 General Conditions

1. The customer is not entitled to assign his claims from the contract.
2. The client may refer to the business relationship with the customer in the context of references and use them for advertising purposes, unless otherwise agreed.
3. The parties mutually undertake not to entice away, employ or contract in their own service or work contracts any permanent employees or freelancers of the other contractual partner for up to 2 years after termination of a contractual relationship. In the event of infringement, the contracting parties undertake to pay the other contracting party a contractual penalty of EUR 15,000 for each case of infringement. The contractual penalty shall not be due if the other contracting party agrees to such a contractual relationship in writing.
4. Exclusive place of jurisdiction for all disputes arising from this contract is Nuremberg, if the customer is a merchant, a legal entity under public law, a special fund under public law or has no place of jurisdiction in Germany. Furthermore, the client is entitled to sue the customer at his general place of jurisdiction. The law of the Federal Republic of Germany shall apply exclusively to the contracts concluded by the client on the basis of these General Terms and Conditions of Business and to claims of any kind arising from them, excluding the provisions of the Uniform UN Convention on Contracts for the International Sale of Goods (CISG).
5. In accordance with the provisions of the Federal Data Protection Act, the customer is informed that his company or personal data required for the handling of business relations will be processed with the aid of EDP.
6. Should provisions of these General Terms and Conditions and/or the contract be or become invalid, this shall not affect the validity of the remaining provisions. Rather, in place of each invalid provision, a replacement provision shall apply that corresponds to or at least comes as close as possible to the purpose of the Agreement, as the parties would have agreed upon to achieve the same economic result if they had been aware of the invalidity of the provision. The same applies to incompleteness.
7. The client reserves the right to review these regulations on a regular basis and, where legally required, to adapt them.