

# Bitkom's contractual terms for hardware maintenance -WH Bitkom-

(WH Bitkom, Version 2.1)

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## **A Subject matter of the contract**

### **A 1 Maintained items**

The provider shall render the maintenance services described in the following only for the agreed hardware (hereinafter: maintained item) in return for the agreed remuneration.

Maintenance does not include any services in connection with use of the maintained item under conditions not contractually defined, or in the event of modifications to the maintained item by the customer or third parties. Also not included are clarification of interfaces to third-party systems, and support in installation or configuration.

The provider shall render the following maintenance services:

### **A 2 Preventive maintenance**

Preventive maintenance serves to ensure that a maintained item remains functional. It takes place on the basis of a support process defined in terms of type and scope by the provider or, insofar as contractually agreed, according to a maintenance procedure specified by the manufacturer of the maintained item.

### **A 3 Malfunction management**

#### **3.1 Receipt of the customer's malfunction reports**

During their regular business hours, the provider shall receive the customer's malfunction reports, furnish each with an ID, classify the malfunctions into agreed categories and use this classification to implement the agreed measures to analyze and remedy the malfunctions. Item 2.4 of the document titled 'AV Bitkom' applies to malfunction reports. On request by the customer, the provider shall confirm receipt of a malfunction report with a notification of the ID assigned to it.

Malfunction management includes no services related to use of the maintenance item in unreleased operating environments or changes to the maintenance item by the customer or third parties.

#### **3.2 Assignment to malfunction categories**

Unless agreed otherwise, the provider shall assign received malfunction reports (item 3.1) to one of the following categories:

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## a) Serious malfunction

The malfunction is based on a fault which has occurred in the maintained item, so as to render its use 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 the maintained item so as to limit the customer's use of the item 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. These are handled by the provider only in accordance with the agreements reached in this regard.

### 3.3 Implementation of measures to eliminate malfunctions

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 the reported malfunction does not turn out to be a fault in the maintained item after initial analysis, the provider shall promptly inform the customer about this.

Otherwise, the provider shall arrange for appropriate measures to further analyse and rectify the reported malfunction. The customer shall promptly implement measures announced to them for the purpose of rectifying malfunctions, and promptly report to the provider again if there are any remaining malfunctions.

## A 4 Contact point (help desk)

### 4.1 Establishment of a contact point

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

### 4.2 Receipt and processing of inquiries

The customer shall announce to the provider staff exclusively possessing appropriate professional and technical qualifications and tasked inside the customer's premises with processing enquiries from users of the maintained item. Only this staff announced to the provider shall direct enquiries to the help desk, using the forms made available by the provider. The help desk receives such inquiries via e-mail, fax and telephone during the provider's normal business hours.

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The help desk shall process proper inquiries as part of normal business routine and answer them as far as possible. In its responses, the help desk can refer the customer to available documentation and other training material for the maintained item.

## A 5 Provision of material and ancillary services

Provision of consumables, wearing or replacement parts is not included in the services under this contract. The document titled 'VH Bitkom' and containing the contractual terms for the sale of hardware applies to any consumables, wearing or replacement parts received by the customer from the provider. Services beyond the scope of items A 2. to A 4. 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 environments of use, clarification of interfaces to extraneous systems, as well as support in installation and configuration.

## B General provisions

### B 1 Duration

- 1.1 Unless agreed otherwise, the maintenance contract begins on delivery as set forth in the purchase contract for the maintained item.
- 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 the provider and by the customer for an important reason without observing a period of notice.
- 1.3 Only written declarations of termination are effective.

### B 2 Remuneration

#### 2.1 Flat-rate remuneration

The customer shall remunerate the agreed maintenance services under A 2., A 3. and A 4. by means of an ongoing flat rate. Consumables, wearing or replacement parts are not included in this flat-rate remuneration. Remuneration for maintenance is payable in advance of an accounting period, and shall be invoiced by the provider 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 Remuneration for consumables, wearing and replacement parts Consumables, wearing or replacement parts supplied by the provider to the customer within the scope of the support process (A 2.), or with their approval, or to an extent commensurate with the value of the maintained item shall be remunerated separately according to 'VH Bitkom' (contractual terms for the sale of hardware).

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## 2.3 Remuneration of additional services

Additional services not covered by the flat-rate remuneration are compensated as set forth in item 1.1 of 'AV Bitkom'.

## 2.4 Adjustments to remunerations

The provider may adjust remuneration according to general list prices every calendar year.

The customer has a termination right if the flat-rate remuneration increases by more than 5% percent. The provider shall notify the customer of such an increase two months in advance. Within one month of receipt of notice, the customer can declare termination by the time the increase is to take effect. Item B 1.3 applies to termination.

## B 3 Right to use accompanying software

The customer's right to use new versions and other corrections (patches) to software delivered in conjunction with hardware correspond to the usage rights for the previous version. With regard to rights of use, the rights for new versions and other corrections supersede the rights to previous versions and other corrections.

## B 4 Customer's obligations

4.1 The customer shall promptly inform the provider about any changes in the operating environment. The customer shall ensure that the maintained item is used solely in an approved operating environment.

4.2 Unless agreed otherwise, the customer shall additionally store, at their premises, all documents, information and data submitted to the provider in such a way that these can be reconstructed in the event of damage or loss of data media.

## B 5 Procedure

Maintenance shall be performed subject to the proviso that the provider is supplied in a timely and contractually compliant manner by their relevant pre-supplier.

Consumables, wearing or replacement parts shall either be new, or equivalent to new parts in terms of utility.

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## B 6 Data protection

**6.1** 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.

**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 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.

**6.3** The provider 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.

## B 7 Validity of 'AV Bitkom'

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

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