



General Terms and Conditions for the Leasing of Hardware and Standard Software

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1. Subject of the agreement, performances, usage rights

- 1.1** The provider leases to the customer, for the term of this lease, the hardware and/or software that is stipulated in the lease.

Hardware and software ("leased items") are always leased separately. When leased items are leased as a single system, they are labeled as a "leased system." If a provision is applicable both to leased items and leased systems, the term "leased property" is used.

The hardware is delivered with an installation manual. The operating instructions (user documentation or online help) and the installation manual can be supplied to the customer electronically at the provider's option, unless this is unreasonable for the customer.

The software is delivered in executable form (as an object program), including operating instructions (user documentation or online help) and the installation manual. The operating instructions and the installation manual can also be supplied to the customer electronically, unless this is unreasonable for the customer.

The leased property is only leased and loaned for the use stipulated in the lease.

Unless otherwise agreed, the qualities, scope, conditions of use and system environment of the leased property arise from the product description and the operating instructions, in this order.

- 1.2** Unless otherwise stipulated in the lease, the customer has independently selected the leased property on the basis of its technical and functional requirements.
- 1.3** For separate remuneration, the provider will deliver the leased item to the deployment/installation site specified in the lease.

For a separate charge, the provider can also perform the deployment and/or installation and make the leased item ready for operation. In the case of leased systems, the provider always makes the system ready for operation, including installation. For such leased systems, the lease also includes the test cases and processes that are to be agreed on for determination of readiness for operation pursuant to section 4.

If the execution of test cases and processes for a leased system is part of the agreement, the lessor also owes this at the times and based on the criteria set forth in the lease.

The provider's obligation to maintain the serviceability of the leased property refers only to its contractually owed condition when the lease starts at the time stipulated in the lease. Additional services, such as customization and changes to the software as well as the creation of interfaces to third-party programs, analytic, planning and related consulting services, are agreed to and compensated separately. This also applies to changes in the conditions of use or the system environment after contract formation which are not occasioned by the provider.

- 1.4** The leased property may be used only by the customer and only for the purposes

stipulated in the lease. Any further use, including any subleasing, requires the prior written consent of the provider.

Unless otherwise agreed, the provider grants the customer the nonexclusive right to use the software at its premises during the rental period for its own internal purposes within the scope of the contractually stated purpose.

- 1.5** The provider is entitled to undertake appropriate technical measures to protect against non-contracted use. The contracted use of the services may not be compromised through this.
- 1.6** The provider may revoke the customer's usage rights and/or terminate the lease if the customer materially exceeds the customer's allowed usage or violates rules that protect against unauthorized use. Before that, the provider shall, in principle, set a reasonable deadline for the customer to undertake remedial action.

Revocation of the usage right alone is not at the same time tantamount to termination of the lease. After the revocation, the customer shall confirm to the provider in writing that the usage has been suspended.

The right of the provider to be compensated for usage in excess of the agreed usage remains unaffected.

The customer has a right to have the usage right restored after the customer has proven that it has discontinued usage in breach of contract and has prevented future usage in breach of contract.

2. Rent

- 2.1** The rent includes remuneration for the hiring of the leased property and its maintenance in the contracted condition. Additional services, such as delivery of consumable supplies, are compensated separately.
- 2.2** Unless otherwise agreed in individual cases, the rent is payable monthly in advance to the lessor's account, without deduction, no later than the fifth business day of each calendar month.

In the case of leased systems, the obligation to pay rent begins with the confirmation of readiness for operation pursuant to section 4 or upon productive use of the leased system by the customer, whichever comes first. If the payment of rent begins during a month, one-thirtieth of the monthly rent is charged each day.

- 2.3** The provider reserves the right to increase the rent as of the end of a month upon three months' notice, but not in the first twelve months and no more than once per year, if its accruing energy and labor costs for maintaining the leased property have increased. When the annual remuneration increases by more than 5%, the customer is entitled to terminate the lease for cause as of the effective date of the increase by giving six weeks' notice after receipt of the demand for the rent increase. In the case of a reduction of the corresponding costs, the customer as well may demand a corresponding reduction of the rent, but not until the first twelve months have passed.
- 2.4** The provider can demand additional compensation for its expense if:
 - a) In particular, a reported incident is associated with the use of leased property

in an environment that has not been approved or with modifications to the leased property that have been made by the customer or third parties;

- b) Additional expense is incurred due to improper fulfillment of the customer's duties (see in particular section 3).

If the provider is entitled to demand compensation in addition to rent for its expense, unless otherwise agreed between the parties in writing, it shall be invoiced in accordance with the provider's billing periods and list prices for hourly, daily and expenses rates which are applicable at the time the services are rendered.

3. Duties of the customer

- 3.1** The customer shall inform the provider in writing concerning intended changes to the stipulated conditions of use or system environment. Section 8.4 of AV BITKOM applies.

If the provider's expense increases due to an incident originating from the customer's area of responsibility (e.g. network operator), the provider may demand compensation for the resulting proven additional expense. Section 2.4 second paragraph applies.

- 3.2** The customer is obligated to handle the leased property with care and protect it from damage. It shall ensure that there is proper use and appropriate operation by sufficiently qualified personnel. To the extent reasonable, the customer shall follow the provider's maintenance, care and user instructions, especially suggestions found in the operating instructions (user documentation or online help) and installation manual. Markings - especially signs, serial numbers, labels, copyright notices, trademarks or the like - may not be removed, modified or effaced.
- 3.3** The customer will grant employees and agents of the provider free access to the leased property during the provider's customary business hours, after advance notice, for maintenance and repair work, unless legitimate security interests of the customer are opposed to this.

4. Determination of a leased system's readiness for operation

Upon delivery of a leased system, the provider and the customer shall jointly determine its readiness for operation pursuant to the lease. To this end, using test cases and processes stipulated in the lease (see section 1.3) as appropriate, the provider and the customer shall satisfy themselves that the leased system conforms to the lease. If the system is ready for operation, the customer shall confirm this on a corresponding form of the provider.

5. Modifications to the leased property / changes in the deployment site

- 5.1** The provider is entitled to make modifications to the leased property for its maintenance. Measures for improvement may only be made if they are reasonable for the customer and do not compromise the contracted use of the leased property. The provider shall inform the customer of corresponding measures sufficiently in advance. Expenses for restoring the stipulated usage options that are incurred by the customer as a result of these measures shall be reimbursed by the provider.
- 5.2** Modifications and additions by the customer to the leased property require the

advance written consent of the provider. This particularly applies to additions or installations as well as connecting the leased property with other devices, computer systems or networks. Excepted from this are connections which serve the use of leased property as intended. Acts of the customer which do not require consent for leased computer programs pursuant to § 69d of the German Copyright Act (Urheberrechtsgesetz–UrhG) remain unaffected. Upon return of the leased property, the customer shall restore the original condition if requested by the provider.

- 5.3** Deployment of the leased property at a place other than the deployment site specified in the lease requires the prior written consent of the provider. The provider shall not unreasonably withhold its consent. The provider may require that it or qualified specialists designated by it shall perform the transport and reinstallation at reasonable prices. The expenses and consequential costs associated with a site change as well as any resulting additional costs for maintenance and care shall be borne by the customer.

6. Material defects

- 6.1** The provider undertakes to maintain the leased property in a condition that is suitable for the contracted use for the duration of the rental period.
- 6.2** No claims shall exist for defects in the leased property where there is a negligible reduction of suitability for the contracted use. In like manner, claims for defects are excluded if the deviation from the contracted qualities is due to improper use or to usage of the leased property under conditions or a system environment which have not been agreed to. The same applies to deviations based on special external influences which are not contractually premised.
- 6.3** The strict liability of the provider under § 536a (1) of the German Civil Code (Bürgerliches Gesetzbuch – BGB) is excluded for deficiencies which were already existing at the time of contract formation.
- 6.4** Section 2.3 of AV BITKOM expressly applies to the reporting of defects. Unless otherwise agreed, the customer shall use the provider's corresponding forms and procedures. Section 8.4 of AV BITKOM applies accordingly. Apart from that, if needed, the customer shall also provide reasonable support to the provider for the removal of defects.
- 6.5** The correction of defects shall occur during the business hours of the provider. The provider shall be given a reasonable time. With the customer's consent, the provider may replace the leased property or individual components thereof for purposes of correcting defects. The customer shall not unreasonably withhold its consent to this.
- 6.6** The customer is not entitled to terminate the lease pursuant to § 543 (2) first sentence BGB for failure to permit use as contracted until the provider has been given sufficient opportunity to correct the defect and has failed. It cannot be assumed that the attempt to correct the defect has failed unless it proves impossible, the provider refuses or unreasonably delays in making the attempt, there are legitimate doubts about the prospects of success or it is unacceptable to the customer for other reasons.
- 6.7** The customer's rights arising under the warranty against defects are excluded if the customer makes, or causes to be made, modifications to the leased property

without the prior consent of the provider, unless the customer proves that the modifications have no unreasonable impact on the analysis and cure of the defect. The customer's rights arising from defects remain unaffected if the customer is entitled to perform modifications - particularly within the scope of the right to engage in self-help pursuant to § 536a (2) BGB - and has properly done so and comprehensibly documented them.

- 6.8** The limitation period for material defects amounts to one year from the statutory commencement of the limitation period. If the law prescribes longer periods for an intentional or grossly negligent breach of duty by the provider, for fraudulent concealment of a defect and in cases of injury to life, limb or health, these shall remain unaffected. The statutory limitation period of § 548 BGB for the provider's claims for compensation arising from modification or deterioration of the leased item or leased system remains unaffected.
- 6.9** Section 6 of AV BITKOM applies supplementally to reimbursement of losses and expenses.

7. Lease term and end of the tenancy

- 7.1** The contractually stipulated services are to be rendered, starting on the date indicated in the lease, initially for the duration of the term stipulated in the lease. Early termination by either party without cause is prohibited during this minimum term.
- 7.2** The lease may be terminated upon three months' notice no earlier than the end of the minimum term. If this does not occur, the lease shall renew for another year at a time unless it has been regularly terminated upon three months' notice as of the end of the particular renewal period. Section 545 BGB does not apply.
- 7.3** The customer's termination right under section 2.3 and section 6.6 as well as the right of either party to summary termination for cause remain unaffected.
- 7.4** To be effective, any termination declaration must be in writing. AV BITKOM Section 8.4 applies.

8. Return of the leased property

- 8.1** At the end of the lease, the customer shall fully return the leased property to the provider in a condition that is consistent with the contracted use, including loaned original data storage media, operating instructions (user documentation or online help) and the installation manual. Copies and downloads that have been made must be completely and irretrievably deleted or destroyed.
- 8.2** Before returning the leased property, the customer is obligated to delete all data belonging thereto in a way that cannot be reconstructed.
- 8.3** The complete return and deletion or destruction under sections 8.1 and 8.2 shall be confirmed in writing to the provider at its request.
- 8.4** If the provider requests it, the parties shall prepare a report upon return of the leased property, in which any damage and defects in the leased property are recorded.
- 8.5** The customer shall bear the cost of disassembly, packaging and the return

transport of the leased property. This does not apply if the agreement holds the provider responsible for making the system ready for use.

9. Application of AV BITKOM

- 9.1** The BITKOM General Terms and Conditions of Contract (AV BITKOM) apply in addition.