

General Terms and Conditions of Business (GTCs) of baramundi software AG, Beim Glaspalast 1, 86153 Augsburg, Germany, hereinafter referred to as "baramundi", for the provision of maintenance services with regard to software products.

## § 1 General

(1) The following General Terms and Conditions of Business shall apply to the business relationship between baramundi and the Customer, where baramundi provides maintenance services for the Customer. Other services such as installation, instruction, training, individual adaptation of the software or other services shall not form part of the maintenance service. If baramundi offers such services, they must be separately agreed. The version valid at the time of contract conclusion shall be authoritative in each case.

Even if repeat reference is not made to these GTCs when similar contracts are concluded, baramundi's General Terms and Conditions of Business in the version provided to the Customer when the Customer submits its declaration shall apply exclusively, unless otherwise expressly agreed between the contracting partners.

(2) For the purpose of these General Terms and Conditions of Business, "entrepreneur" means any natural or legal persons or partnerships with legal personality which, when concluding the legal transaction, are acting in the exercise of their commercial or independent professional activity. For the purpose of these General Terms and Conditions of Business, customers are exclusively entrepreneurs.

(3) Individual contractual agreements shall take precedence over these General Terms and Conditions of Business. Divergent, opposing or supplementary general terms and conditions of business shall not become part of the contract unless their validity is expressly approved.

## § 2 Contract conclusion

(1) The Customer may commission baramundi to provide maintenance services by e-mail, by fax or in writing. The contract shall be entered into when the Customer places an order with baramundi and baramundi confirms acceptance of the order.

(2) In placing the order the Customer shall make a binding declaration that it wishes to obtain maintenance services.

(3) Unless otherwise separately agreed between the parties, baramundi shall be entitled to accept the contractual offer contained in the order placement within one week of receipt. Acceptance may as a whole be declared by means of a written declaration of acceptance or by another form of declaration through which the willingness to accept the order which has been placed is discernible. If baramundi provides the service which has been ordered, this shall be deemed equivalent to acceptance. As a rule, a legal obligation shall materialize when a contract is signed by both parties or when baramundi issues a written order confirmation.

(4) Separate contracts must be concluded for other types of deliveries and services (e.g. provision of software, consulting in relation to the set-up and installation of the software).

## § 3 Definitions of terms within the software maintenance contract

**Software** means all components and their related services acquired by the Customer from baramundi under a contract, to be concluded separately, for the sale and use of software products. Reference is made to baramundi's General Terms and Conditions of Business for the Sale of Software.

**Release** is the main version of a piece of software which is designated by a sole year or a combination of year and a sequential number after the letter "R", e.g. Release 2016 (synonymous with Release 2016 R1) or Release 2016 R2. In the technical version identifier, this corresponds to the first two figures (e.g. 16.1 and 16.2). A release typically contains both functional enhancements and also bug fixes.

**Update** is the version of a piece of software which is designated by sequential numbering after the term "Update" or the letter "U" (e.g. 2016 R2 U1). In the technical version identifier, this is the fourth figure (e.g. 16.2.1085.1). An update primarily contains bug fixes.

**Updated release** is a release with the latest relevant update status (highest available update number). If no update exists, the release corresponds to the updated release.

**Version** is the umbrella term for release and update and indicates a certain software status.

**Incident** is a malfunction which occurs in connection with use of the software.

**Service request** is a request for information, advice and/or support.

**Change request** is a request to modify the software.

**Ticket** serves to log an incident, service request or change request. This is done by means of a telephone call or an e-mail from the customer. Several tickets can be logged for one telephone call. Incidents are identified, logged and categorized in a ticket.

**Final communication** is the communication of a) a proposal to resolve an incident, a description of a workaround, or the communication of the insoluble nature of an incident to the Customer or b) the end of processing a service or change request.

## § 4 Object of the contract

(1) The object of the contract is the provision of maintenance services (software maintenance) in relation to the software which is provided to the Customer by baramundi. Unless expressly otherwise agreed, the maintenance relationship shall commence upon conclusion of the contract.

(2) baramundi shall offer the following software maintenance services:

- The Customer shall be offered versions of the contractual software which are issued during the contractual term;
- The customer shall be given technical support during baramundi's official support times in order to remedy incidents.

(3) The agreements made in each individual case between the parties pursuant to the contractual offer contained in the order and the associated order confirmation by baramundi shall be authoritative as regards the specific scope of performance and the type and quality of the maintenance services.

(4) Software maintenance shall be provided in accordance with the respective state of the art and in such a way that it is geared to the interests of all users of the software.

(5) baramundi may, where applicable, supply new software in the way that it was permitted to do so for the initial delivery pursuant to the software purchase contract or by making the new version electronically available to the Customer. In the event of a change in the state of the art, baramundi reserves the right to modify the form of delivery.

## § 5 Details of the software maintenance services

(1) In addition to the customary warranty relating to the software purchased by the Customer, baramundi shall support the Customer by providing support services in the event of incidents in the respective current release and the releases of the previous year. For example, upon rollout of Release 2017 R1, support shall still be provided for Releases 2016 R1 and 2016 R2.

(2) Telephone support shall be provided on working days between 8:30 a.m. and 5:00 p.m. Central European Time (CET) shall apply, taking into account the statutory rules on public holidays in Bavaria.

(3) More extensive support and maintenance services, including in particular service requests, change requests or an on-site service at the Customer's premises, shall not be included in telephone support and shall therefore require a separate, express order. In principle, support services shall not include any general instruction in software applications and to this extent shall also not replace training courses.

(4) baramundi shall not be obliged to process incidents the origin of which is not connected with use of the software released by baramundi and/or which are attributable to an inadequate infrastructure (hypervisor, database system, storage, network, etc.) which does not correspond to the system requirements according to the release notes or which are caused by third-party modules/configurations (antivirus software, firewalls, Microsoft patch levels, etc.).

(5) Response or processing times are not agreed in the General Terms and Conditions of Business for Software Maintenance. baramundi shall prioritize tickets according to urgency and importance. baramundi shall in principle respond without delay, in accordance with the company's internal organization. More far-reaching response or processing times shall require a separate, express agreement between the parties.

(6) baramundi may process tickets in German or English.

(7) baramundi shall be entitled to change the employee responsible for processing an incident at any time; in exceptional cases execution of all or part of the work may be transferred to third parties.

(8) Updating the software: during the contractual term, baramundi shall make all versions of the purchased software available to the Customer via download. The Customer shall not be entitled to have updated versions provided in specific cycles.

(9) With regard to new versions, baramundi shall be entitled to modify the system requirements and compatibility lists for such versions within reason, while fundamentally safeguarding the Customer's interests.

## § 6 Ancillary obligations and other duties of cooperation incumbent on the Customer

(1) baramundi shall be exempted from the obligation to provide maintenance services for the Customer, without this affecting the obligation to pay the agreed remuneration, if the Customer fails to install the respective current release or the previous year's releases and also disregards the supplied solutions for the software. The Customer itself shall be responsible for installing software versions.

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(2) The maintenance service shall not include repairs or increased software maintenance expenses which were necessitated by usage contrary to the contract, usage in a different operational environment to that which has been agreed, improper usage, breach of integrity (e.g. through write database accesses or improper connection of third-party systems by circumventing the interfaces provided), external influence, force majeure or similar circumstances, work on software which the Customer has modified in contravention of the contract or which has undergone technical maintenance by persons other than baramundi, without baramundi's prior express consent having been obtained in each case.

(3) The Customer shall inform baramundi without delay if the software does not work properly. The Customer may make such notifications by telephone; in such a case, it must, however provide a specific and adequate additional written description of the circumstances in which the fault occurred and the resulting consequences.

(4) The Customer shall be obliged to ensure data backup; in particular, a data backup must be carried out immediately before a new version is uploaded or a maintenance service is implemented and all data used or generated in connection with the software must be kept in machine readable form as a backup copy which enables lost data to be reconstructed at reasonable effort and expense.

(5) The Customer should, where necessary, make it possible for baramundi to perform remote access. Otherwise, no guarantee can be given that it will be possible to process an incident by telephone.

(6) baramundi may, where applicable, demand that in the event of incidents, the symptoms arising, the program and also the system and hardware environment be observed in detail and reported (using forms provided by baramundi), stating information relevant for fault rectification, such as the number of users affected, a description of the system and hardware environment, as well as any third-party software being run at the same time, and documents. Similarly, baramundi may demand that identified malfunctions be made available in reproducible form on a suitable data carrier.

(7) Telephone support shall serve to deal with incidents which cannot be resolved by the Customer using its own resources. In this context, "own resources" shall mean the reconstruction of the incident which has occurred in a test environment, reconciliation of object statuses, looking up in the enclosed documents, for example from auxiliary materials or other resources (auxiliary texts, documentation, etc.). The Customer itself shall in general be responsible for acquiring the qualifications required to use corresponding resources. It is expressly stated that baramundi offers corresponding training and consulting services. As a rule, telephone support can only be given to qualified persons, who, where this is necessary in an individual case, have successfully completed training courses, where possible provided by baramundi (getting started workshops, training courses).

(8) In order to avail itself of support from baramundi, the Customer must name all qualified employees who are authorized to open tickets with baramundi.

## § 7 Remuneration

(1) The prices quoted by baramundi shall be binding. In principle, prices are exclusive of the statutory rate of value added tax and any other duties.

(2) Customers may pay the remuneration owed on account. The costs of utilizing maintenance services shall be based on the agreements made in each individual case between the parties pursuant to the contractual offer contained in the order and the associated order confirmation by baramundi. The remuneration shall be paid annually in advance.

(3) Unless where applicable or separately agreed between the parties, the Customer must pay the remuneration within 14 days of receiving the order confirmation/the invoice. After expiry of this period, the Customer shall be deemed to be in default. During the period of default, the Customer shall pay interest of 9 percentage points above the base interest rate on the monetary debt. baramundi reserves the right to claim higher damages for default.

(4) baramundi reserves the right to adjust the remuneration to be paid at its reasonable discretion in line with the development of the costs that are relevant for the price calculation. A price increase can be considered and a price reduction should be applied if, for example, the costs for the procurement of hardware and software as well as energy, the use of communication networks or labor costs rise or fall, or if other changes in the economic or legal framework conditions result in a changed cost situation. Increases in a cost category, e.g. labor costs, may only be used for a price increase to the extent that they are not offset by possible declining costs in other areas, such as hardware and software costs. In the case of cost reductions, e.g. hardware costs, baramundi shall reduce prices insofar as these cost reductions are not fully or partially offset by increases in other areas. When exercising its reasonable discretion, baramundi shall choose the respective dates of a price change in such a way that cost reductions are not taken into account in accordance with criteria less favorable for the customer than cost increases, i.e. cost reductions affect prices to at least the same extent as cost increases. baramundi shall inform the customer in writing of changes to fees no later than six weeks before the changes take effect.

(5) The Customer shall have a right of set-off only if its counterclaims have been established by a court of law, have been acknowledged or have not been contested by baramundi. This shall not affect the Customer's right of set-off against contractual and other claims resulting from the initiation or implementation of this contractual relationship. The Customer may only exercise a right of retention if its counterclaim is based on the same contractual relationship.

## § 8 Rights

(1) With regard to the software provided to it within the context of maintenance, the Customer shall have the rights specified in the software purchase agreement. In principle, however, the Customer may use only one version for productive purposes.

(2) Provided that a license for productive use exists, the Customer shall be entitled to one test license free of charge (which may not be used for productive purposes).

(3) After productive use ends, the Customer may keep earlier versions of the software for documentation purposes and for emergencies. baramundi herewith grants the Customer the necessary rights.

## § 9 Termination

The maintenance contract may be concluded for a term of 1, 3 or 5 years from the date of contract conclusion. Unless either party terminates the maintenance contract with a notice period of 3 months to the end of the respective agreed term, the maintenance contract shall in each case be extended by a further twelve months. Extraordinary termination shall not be affected by this provision. In order to be effective, each termination shall require written form pursuant to Section 126 of the German Civil Code (BGB).

## § 10 Place of performance

The place of performance for services shall be the place at which the service is to be provided. In all other cases, baramundi's registered office shall be the place of performance for all services under and in connection with the present contract.

## § 11 Warranty

(1) baramundi shall warrant that the services provided within the context of the maintenance services do not contain errors which nullify or reduce the value compared to the agreed scope of performance. This shall not apply to reasonable minor deviations.

(2) If defects arise during use in accordance with the contract, the Customer shall be obliged to give baramundi the opportunity to rectify these within a reasonable time. The Customer must immediately notify baramundi of the defects in an understandable manner and must provide the information of relevance for rectifying the defects. The Customer must give reasonable support to baramundi during rectification of the defects. baramundi shall not give any warranty for defects which cannot be reproduced by baramundi.

(3) If, despite repeated efforts, baramundi is unable to rectify the defect or implement a workaround in such a way that the software can be used in accordance with the product specification, the Customer shall be entitled to demand a reduction of the agreed remuneration or to withdraw from the contract, in accordance with statutory provisions.

## § 12 Limitations of liability

(1) In the event of slightly negligent breaches of duty, liability shall be limited to the average foreseeable, direct damage typical for the contract, based on the type of goods. This shall also apply in the event of slightly negligent breaches of duty on the part of baramundi's statutory representatives or vicarious agents or persons employed by baramundi in the performance of its obligations. baramundi shall not be liable for slightly negligent breaches of minor contractual obligations. In contrast, baramundi shall be liable for a breach of legal positions of the Customer which are material to the contract. Legal positions which are material to the contract are legal positions which the contract must guarantee to the Customer according to the content and purpose of the contract. baramundi shall also be liable for a breach of obligations the fulfillment of which makes due performance of the contract possible in the first place and on the fulfillment of which the customer may rely.

(2) The above limitations of liability shall not affect claims of the Customer involving warranties and/or product liability. Furthermore, the limitations of liability shall not apply in the event of malicious intent, in the event of a breach of essential contractual obligations or in the event of physical injury to, damage to the health of or death of the Customer which is attributable to baramundi.

(3) baramundi shall not be liable for the loss of data and/or programs where the damage is due to the fact that the Customer has failed to perform a data backup and thus ensure that lost data can be restored with justifiable effort and at reasonable expense.

## § 13 Data privacy

(1) The contracting parties shall observe the applicable data protection regulations, in particular those valid in Germany, and shall bind separately their employees employed in connection with the contractual relationship and its performance to data secrecy – unless they are already generally obliged in this regard.

(2) If the Customer collects, processes or uses personal data, it shall be responsible for ensuring that it is entitled to do so in accordance with the applicable provisions, in particular those of data protection law, and shall indemnify baramundi from claims by third parties in the event of an infringement.

(3) Personal data which baramundi collects in the course of performing its contractual obligations shall be dealt with in confidence and shall be collected, processed and used only to the extent that this is permitted by reason of provisions of data protection law or that the Customer consents thereto.

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## § 14 Amendment of these General Terms and Conditions of Business

(1) baramundi reserves the right to amend these General Terms and Conditions of Business at any time while observing an appropriate period of notice of at least six weeks. baramundi shall inform the Customer of a corresponding amendment in text form.

(2) If the Customer does not object, the amended Terms and Conditions of Business shall be deemed to have been accepted. If an objection is made, the contract shall continue to apply unchanged, with the existing terms and conditions of business; baramundi shall, however, be entitled to pronounce ordinary termination in accordance with the contract.

## § 15 Final provisions

(1) The law of the Federal Republic of Germany shall apply. The provisions of the United Nations Convention on the International Sale of Goods shall not apply.

(2) Where the Customer is a merchant, a legal entity under public law or a special fund under public law, the legal venue for all disputes arising under the present contract shall be the court with jurisdiction for baramundi's registered office, unless an exclusive legal venue applies. baramundi shall, however, also be entitled to bring an action against the merchant at his place of residence or place of business. This shall not affect jurisdiction based on an exclusive legal venue.

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