

General Terms and Conditions for Development and Consulting Services

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1 Scope of Application

- 1.1 These General Terms and Conditions ("**GTC**") govern the performance of development and consulting services by Checkmk GmbH ("**Provider**"). These GTC will also apply in the absence of any express reference to these GTC.
- 1.2 Services under these GTC are available only to Customers with a currently valid Subscription for Checkmk Software.
- 1.3 The services of the Provider are offered exclusively to natural or legal persons under private and public law or partnerships with legal capacity, who act in exercise of their trade, business or profession. The Customer's status must be proven upon formation of the contract, e.g. by providing the VAT identification number or other suitable proof. The information required for that purpose must be provided completely and truthfully.

2 Development Services

- 2.1 The development services are described in the development order.
- 2.2 The Customer must provide a complete and accurate description of its functional requirements. The Customer must respond to additional questions from the Provider without delay. If the Customer violates his duties to cooperate, this may cause additional work on the part of the Provider, which may be billed separately.
- 2.3 Development services are planned by the Provider in time-limited sprints. The active and timely participation of the Customer is therefore of critical importance. If the Provider is prevented from providing development services as a result of the Customer's failure to cooperate, insufficient cooperation or delayed cooperation, the Provider reserves the right to terminate the development order without further notice.
- 2.4 The results of development services will be integrated into the next full version (e.g., 2.4.0) of the Checkmk Software, unless otherwise agreed. Adaptations to previous versions (backports) will be agreed and billed separately. Installation or configuration on the Customer's systems or the roll-out in the Customer's infrastructure are not owed as part of development services.
- 2.5 Development services are provided exclusively for the commissioned version numbers. Typically, the Provider will continue to maintain the developed software in future versions of Checkmk. However, the Provider reserves the right to adapt, develop or remove functionalities as part of the evolution of the product. The Customer therefore has no claim that a specific functionality created through development services will remain unchanged in future versions of Checkmk, or that it will be retained at all. Unless otherwise agreed, the

adaptation of the results of development services to future versions of Checkmk is at the Provider's sole discretion.

- 2.6 The Provider may, at its sole discretion, determine the technical implementation of the functional requirements. Changes in services must be mutually agreed and confirmed in text form (e.g., by postal mail, e-mail or fax).
- 2.7 Dates and times of delivery and/or performance times will be binding upon the Provider only if expressly identified as such by the Provider and confirmed at least in text form (e.g., by postal mail, email or fax).
- 2.8 Development services are subject to acceptance. The Provider will make the results of development services available for acceptance after completion. Unless agreed otherwise, the Customer must, in the absence of any defects that would prevent acceptance, confirm its acceptance within four weeks. Development services will be deemed to have been accepted if the Customer commences production use or has not submitted a list of defects containing at least one material defect that would prevent acceptance within the above time period.
- 2.9 The Provider may make partial delivery insofar as the Customer can make meaningful use of the results delivered.
- 2.10 If development services cannot be carried out without significantly exceeding the estimated costs, the Provider may terminate the development order in whole or in part. The Customer will, in any such case, not be liable for payment of the terminated part of the service. If a significant overrun of the cost estimate is to be expected, the Provider shall notify the Customer immediately. The Provider will not be liable for any loss incurred by the Customer due to the termination, unless the Provider has caused the damage through gross negligence or willful misconduct.

3 Consulting Services

- 3.1 The consulting services are described in the consulting order.
- 3.2 The Customer acknowledges that fulfillment of its duties of cooperation is a basic prerequisite for the performance of the services of the Provider and as a result constitutes a contractual obligation. The Customer must make available, free of charge, the premises, technical environments, system access, contact persons and documentation required by the Provider for the purpose of performing its services. The Customer will, among other things, ensure that security systems (in particular Firewalls) do not hinder the performance. If consulting services are not provided on the Customer's premises, the Customer must enable access to a user's screen via screen sharing. The Customer must also make any necessary decisions regarding the implementation and scope of the project without delay and inform the Provider accordingly. In addition, the Customer must examine changes suggested by the Provider without delay.
- 3.3 The Customer will, on a timely basis, make available all technical and other documentation and information required for a successful outcome. In the event that the Customer

breaches or fails to properly perform any duty or obligation and thus interferes with the performance of the services of the Provider, agreed execution deadlines will be extended by a period equal to that of any delay incurred plus an appropriate time for resumption of work.

4 Payment and Invoicing

- 4.1 Development and Consulting Services will be billed on the basis of time worked at the current rates or at a fixed price. All prices provided will be estimates unless fixed prices are expressly agreed.
- 4.2 If a maximum effort is defined, the Provider will stop the work when this limit is reached. As soon as the Provider realizes that the maximum effort will be exceeded, the Provider informs the Customer accordingly. In this case, the parties shall adjust the project planning by mutual agreement so as not to exceed the agreed maximum effort or extend the order.
- 4.3 For services provided on the Customer's premises, a travel allowance will be charged in addition. The travel allowance depends on the location and the number of assignments. Travel expenses and the cost of accommodations will not be itemized. A consultant day corresponds to up to eight hours of work by one employee on one calendar day.
- 4.4 Invoicing takes place for development services after acceptance and for consulting services after completion of the services.
- 4.5 All prices are net prices and subject to value added tax at the legal rate currently in effect.
- 4.6 Invoices will be due immediately upon receipt and payable within fourteen (14) days.

5 Remedies for Defective Development Services

- 5.1 The Customer shall report defects in text form (e.g., by postal mail, email or fax) immediately after their discovery, describing them in detail. Any warranty claims of the Customer will become time-barred twelve (12) months after acceptance unless the Provider has fraudulently concealed the defect; the statutory limitation period for claims for damages by the Customer for defects will continue to apply. The statutory limitation period for partial deliveries begins when the respective portion of the total services is accepted. Any duty on the part of the Customer to notify defects under commercial law remains unaffected.
- 5.2 The Provider may choose how it will remedy its performance. If the Provider provides the Customer with a reasonable workaround for the defect, this will also qualify as a remedy. The Provider may also require the Customer to install the patches that it delivers for the purposes of remedying any defects. In the case of defects that do not prevent acceptance, the Provider may decide at its reasonable discretion when to remedy such defects.
- 5.3 Records and information that may be reasonably required by the Provider so that it can analyze and correct defects will, at the Provider's request, be made available by the Customer free of charge. In addition, the Customer will, as far as may be reasonably

expected, assist the Provider free of charge in connection with the analysis and correction of the defects.

- 5.4 In the event that Checkmk GmbH has finally and conclusively failed to remedy the defects, the Customer may require a reduction in the compensation or, in the case of defects in quality which prevent acceptance of the work, rescind the contract. The determination whether the Provider has finally and conclusively failed to remedy a defect must take into account the complexity and the circumstances involved, whereby failure cannot be assumed after two unsuccessful attempts to remedy the defect. The Customer may not exercise self-help rights or have corrective work carried out by third parties. The Customer may claim damages only under the provisions contained in section 9.
- 5.5 The Provider will not be liable for defects that are the result of performance specifications or concepts prescribed or approved by the Customer, where these contain errors or are incomplete, nor will it be liable for defects resulting from faulty work carried out by the Customer or by third parties that it deploys. Where deliverables have been modified, the Provider will not be liable for any defects unless the Customer can prove that the defects at issue were not caused by the modifications.
- 5.6 If a defect alleged by the Customer is not attributable to the Provider or does not in fact exist, the Provider will be entitled to charge the Customer for the costs incurred for analysis and remedial work at the current rates, provided that the Customer was at least negligent in not recognizing that no defect existed.

6 Remedies for Defective Consulting Services

- 6.1 If the Provider fails to provide the consulting services in conformity with the contract, the Provider will be entitled, at no charge, to re-perform the services to the extent that they can be re-performed, and the Customer can be reasonably expected to accept the re-performance. The Customer will grant the Provider a reasonable grace period for re-performance. If the Provider fails or refuses to re-perform during the grace period, the Customer may terminate the consulting order for cause. Any claims for damages or reimbursement of expenses will be limited pursuant to section 9 .
- 6.2 Where new program versions, updates or patches are provided to the Customer as part of consulting services, warranty claims regarding improvements that do not constitute a removal of defects will be governed by the provisions of section 5.

7 Rights of Use

Where the Provider delivers software or copyrightable works in connection with any services under these GTC, the respective rights of use will be governed by the provisions of the EULA. The Provider will otherwise retain all rights of use and exploitation.

8 Confidentiality

The confidentiality agreement between the parties shall apply accordingly to information exchanged in connection with development and consulting services.

9 Limitation of Liability

- 9.1 The Provider will only be liable for damage caused by slight negligence where the damage results from the breach of a material duty that jeopardizes the achievement of the purpose of the contract or from a breach of a duty whose fulfillment is of the very essence for the proper execution of the contract.
- 9.2 In the cases covered by section 9.1, the Provider's liability is limited to the damage which can be reasonably foreseen for such type of contract.
- 9.3 In the cases covered by section 9.1 the amount of the Provider's liability is in any event limited in respect of each development or consulting order to a maximum of fifty percent (50%) of the compensation paid by the Customer to the Provider for the respective development or consulting service.
- 9.4 Liability for loss of profit is excluded in the cases covered by section 9.1
- 9.5 The Provider will only be liable for loss of data and programs and outages if (i) the damage could not have been avoided even by taking appropriate precautions to avoid loss of data (in particular, by creating, at least on a daily basis, backups of all programs and data) and by taking appropriate precautions in line with the state-of-the-art technology to avoid outages (in particular, by testing updates in a test environment before using them in a production system and by preparing disaster recovery plans) or (ii) the damage was caused by gross negligence or intentional wrongdoing on the Provider's part. All liability for loss of data is subject to the other restrictions in this section 9.
- 9.6 Except in cases where a guarantee has been provided, damage results from intentional wrongdoing or fraudulent concealment of errors or where personal injuries occur, the above limitations on liability apply to all claims for damages and reimbursement of expenses, irrespective of their legal basis and including claims based on tort.
- 9.7 The above limitations on liability also apply where a claim for damages is brought against an employee or agent of the Provider.

10 Final Provisions

- 10.1 These GTC and the development or consulting order comprise the entire agreement between the parties concerning the subject matter hereof and supersede any prior agreements between them. Any provisions in the Customer's general terms and conditions which conflict with, vary from or add to these GTC will only become part of the contract if and to the extent that the Provider has expressly consented to them. This requirement of consent will apply in any case, even if the Provider, for example, provides goods and services without reservation despite being aware of the Customer's general terms and conditions. The registration of the Provider at a supplier portal of the Customer or another platform, which is necessary for the execution of the contractual relationship and which requires consent to terms and conditions of the Customer, shall not be considered as explicit consent. Such terms and conditions will not become part of the contract.

- 10.2 To the extent there is a conflict between different elements of the agreement, the following precedence will apply: (1) the development or consulting order; (2) these GTC; and (3) the other Appendices and referenced documents.
- 10.3 Performance by Provider is subject to the condition that no obstacles based on national or international provisions of foreign trade law or embargos and/or other sanctions stand in the way of performance.
- 10.4 Amendments or additions will only be effective if the Provider has made the relevant declaration of intent at least in text form (e.g., by postal mail, email or fax). The same applies to any waiver of the text form requirement.
- 10.5 Should any provision be or become invalid in whole or in part, this shall not affect the validity of the remaining provisions. The parties agree to substitute for any such invalid provision a valid provision that most closely approximates the economic effect and intent of the invalid provision.
- 10.6 The Provider may use the Customer's name and logo on the Provider's website, customer lists and marketing materials to represent that the Customer is a user of Checkmk Software.
- 10.7 The Customer may only set off counterclaims that are undisputed or non-appealable.
- 10.8 German law shall apply, with the exception of those provisions that would result in the application of the laws of a different jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods (CISG) will not apply.
- 10.9 The courts of Munich, Germany, will have exclusive jurisdiction over any disputes arising out of or in connection with these GTC and the agreements concluded thereunder, including their validity. The Provider reserves the right to bring action at the place of performance or at the Customer's general place of jurisdiction. Overriding statutory provisions, in particular on exclusive jurisdiction, shall remain unaffected.