

General Software Installation Terms
of tocario GmbH

§ 1 Scope of validity

- (1) These general software installation terms (hereinafter "**installation terms**") apply to the provision of software installation services by us, tocario GmbH, to you as a customer or partner (hereinafter "**customer**") on the basis of a partnership contract with the customer or an offer that we give to the customer with respect to our tocario trueDaaS software (hereinafter "**software**"). Our software terms and conditions apply for the software use and licensing. Our software maintenance terms apply for the provision of software maintenance services.
- (2) Our installation terms apply exclusively. Conflicting, supplementary, or deviating conditions of the customer from these installation terms are not part of the contract unless we have expressly consented to their application. Our installation terms also apply if we perform a service with the knowledge of conflicting or deviating conditions of the customer.
- (3) Our installation terms only apply if the customer is an entrepreneur (§ 14 BGB), a legal entity under public law, or public-law special fund.

§ 2 Software installation

- (1) We will install the software on a server specified by the customer that is suitable for operation of the software (test system) and integrate it into the existing system environment and configure the software for the customer. Installation is carried out remotely via an Internet connection; the presence of our staff at the customer's location is not owed nor necessary.
- (2) When installing the software, we are responsible for the following areas:
 - Management system: trueDaaS operating system (OS); software for which trueDaaS OS installation is only possible by us if remote access to the IPMI / management controller is given with a KVM and media forwarding option and MySQL database (if it is running on the customer's system);
 - VM hosts: trueDaaS OS; software; availability monitoring.
- (3) Migration of the customer's data is not owed. Transferring the software from a test environment to a production system of the customer is the customer's responsibility.

§ 3 Cooperation and obligations of the customer

- (1) The parties are obliged to cooperate closely and efficiently, for which the personnel, organisational, professional, and technical responsibility of the customer is essential, especially
 - (a) to leave proper documentation required to install the software, documentation and information in particular on existing systems, equipment, computer programmes, and computer programme parts that are to interact with the software interface,
 - (b) to provide test plans and test data as well as build and provide the test environment for the software,
 - (c) to document detected errors in the software testing in a reproducible and certainly comprehensible form and to notify us immediately,
 - (d) to provide systems, equipment, and professionally suitable staff to work with to the extent necessary to install the software on their own expense,
 - (e) to meet the (cooperation) obligations by the deadline, to undertake the (cooperation) actions, and to make any necessary declarations without delay.
- (2) For the installation, the customer is accountable and responsible for the following areas:
 - Management system: Hardware (+ hardware monitoring); if a VM of the customer is used for this: VM, monitoring; monitoring can be done by installing monitoring agents or by querying the system status via the tocario HTTP API;
 - VM hosts: Certified hardware with a maintenance contract;
 - NFS storage (complete + NFS exports);

Network: Routing, public IP addresses, DNS, SSL certificates; VPN (at least access to the management system by SSH via VPN); reporting / "lifeline": access of the management system to the reporting API endpoint must be secured (HTTPS / 443, data transmission via TLS and public key authentication).

- (3) When installing software, the customer is accountable and responsible for the following areas:
VM hosts: any form of third-party software (such as operating systems and applications)
- (4) The customer grants us access to the software by remote data transmission (VPN) for troubleshooting.
- (5) The customer has the right to use third-party systems as far as this is necessary to allow installation of the software.
- (6) The customer shall name at least one employee at the installation location of the software or a central service desk as a contact. Changing the contact person or the team must be reported to us immediately. The contact person must have experience dealing with the software either directly or available through the service desk. Only contact people who are qualified in the solution and software are authorised to issue error messages.
- (7) The software tested by tocario for code quality will be thoroughly tested before use by the customer for defects and usability in the existing hardware and software configuration. This also applies to software that the customer receives under warranty.
- (8) The customer guarantees a functioning infrastructure in which the software runs. The customer will perform continuous maintenance on their system environment (hardware and software) (the customer should sign the appropriate maintenance contracts for this).
- (9) If the customer is in default of fulfilling acts in their responsibility, our performance obligation is on standby for the duration of the delay that can be provided without this action, or only with disproportionate additional cost. Additional cost caused by this are to be reimbursed to us by the customer at the agreed remuneration on the basis of the applicable daily rate/hourly rates. Our further legal rights remain unaffected.

§ 4 Pilot operation and acceptance

- (1) There is a Pilot run of 15 business days after installation and implementation of the software in the customer's environment in accordance with § 2. During this time, there is an extensive review of the software in customer's environment by the customer. The customer will provide a test plan for this in order to test the functionality of the software in the customer's environment.
- (2) During this time, the customer must notify us of any defects within three business days. After this notification, we will correct the defect within 15 business days.
- (3) If we have completed all contractual work and the trial operation to be performed under this section is completed without significant defects upon conclusion of the trial phase, the customer is obliged to accept the work according to the contract created.
- (4) If the customer has not accepted the software installation after four weeks, although they are obliged to do so, it shall be deemed accepted.

§ 5 Data backup by the customer and our liability for loss of data

- (1) The customer shall make appropriate arrangements in accordance with the Appendix service description (components and responsibilities) in the event that the software works completely or partially incorrectly (e.g. daily backup, fault diagnosis, regular checking of the data processing results). In particular, the customer will make a full backup of all system and application data by us or a commissioned third party immediately prior to installation and/or other engagement. The backups must be stored in such a way that the data can be restored at any time.
- (2) If the customer does not explicitly indicate in advance, we can assume that all of the customer's data with which we come into contact is secured.
- (3) In the case of data loss, we are not liable to the extent that the damage is due to the fact that the customer has neglected their obligation under para. 1 to perform backups and thereby ensure that lost data can be recovered with reasonable effort. In other respects, § 8 applies.

§ 6 Remuneration

- (1) The fee for the software installation results from the partnership agreement or our offer.
- (2) Services outside the agreed scope of the software installation or the contract are to be paid separately by the customer, provided they are not services due to existing defect claims. In the absence of an agreement, our current applicable daily/hourly rates apply.
- (3) Statutory VAT is not included in the price and is shown separately in the invoice on the day of invoicing in the applicably statutory amount.
- (4) Unless otherwise agreed, compensation is due within 14 days from the date of the invoice. The date of payment is when we receive it.
- (5) A flat-rate compensation is payable unless otherwise agreed in advance.
- (6) In the case of delayed payment, the customer must pay interest at the rate of 9 (nine) per cent p.a. above the base rate. We may also charge the customer a fee of 40 euros. We reserve the right to assert higher interest rates and/or further damages. The fee according to sentence 2 is deducted from compensation payable if the damage is due to costs of prosecution. Any claims for default interest, in particular for work performance according to § 641 para. 4 BGB and to merchants according to § 353 HGB remain unaffected.

§ 7 Material and legal defects

- (1) We guarantee follow-up service in the case of material defects. To this end, we grant the customer a new, defect-free software version of our choice or repair the defect.
- (2) Repairing the defect as defined in para. 1 also applies if we can reasonably demonstrate to the customer how to avoid the effects of the defect.
- (3) We are not liable for any defects, insofar as these are attributable to the customer, unless the customer proves they are not responsible for the defect.
- (4) In the case of legal defects, we first guarantee follow-up services. For this purpose, we provide the customer with a legally faultless option of use of our choice for the delivered contractual items or exchanged or modified equivalent contractual items. Contractual items shall be considered equivalent if and to the extent the owed functionality of the contractual items are not significantly affected.
- (5) If third parties assert claims that prevent customers to use their contractually granted permitted usage, the customer shall inform us in writing immediately and extensively. The customer herewith authorises us to take actions against third parties in and out of court. If the customer is sued, they coordinate with us and only take procedural measures, esp. acknowledgments and comparisons, with our prior consent.
- (6) The customer can only derive rights from other breaches of obligation by us if they have reprimanded us in writing and given us a grace period to remedy the situation. This shall not apply if a remedy cannot be considered due to the type of breach of obligation. For damages or reimbursement of expenses, the limits set out in § 8 apply.

§ 8 General liability

- (1) We are liable - for whatever legal grounds - for damages or reimbursement of expenses in accordance with the following provisions in subparagraph (a) and (b):
 - (a) In the case of intent or gross negligence, we are liable without limitation. In the case of minor negligence, we are only liable for damages resulting from the breach of a contractual obligation (obligation whose fulfilment makes proper execution of the contract possible and the fulfilment of which the customer regularly relies and trusts); in this case our liability is limited to the replacement of typical foreseeable damages.
 - (b) Liability exclusions and limitations arising out of subparagraph (a) do not apply if we fraudulently conceal a defect or give a guarantee for the quality of the property, for damage resulting from injury to life, limb or health, in the case of liability due to intent or gross negligence, and in the case of liability under the Product Liability Act.

- (2) If the liability towards us is excluded or limited, this also applies to the personal liability of our legal representatives and agents.

§ 9 Confidentiality and data protection

- (1) The parties are obliged to keep confidential all knowledge of confidential information and trade secrets gained as part of contract negotiations and execution permanently and to only use it for the purpose of implementing this contract. Our trade secrets also include subjects of the contract and the services provided under this contract.
- (2) The customer will only make trade secrets accessible to employees and other third parties to the extent necessary to exercise the usage authorisation granted to them. The customer will instruct all persons to whom they grant access to the trade secrets of our rights regarding the software and the obligation to their confidentiality and obligate these individuals to confidentiality and use of the information only to the extent in accordance with point 1, provided that the persons concerned are not obligated to confidentiality for legal reasons other than those in the previous scope.
- (3) The foregoing obligations do not apply to trade secrets that (i) were already apparent or known to the other contracting party at the time of their transfer; (ii) became known to the party at no fault of the other party after their transfer; (iii) became accessible to third parties in a lawful way and without limitation with respect to confidentiality or use after transfer by the party to the other party; (iv) that developed independently by a party without use of the trade secrets of the contracting party, (v) that were published in accordance with the law, governmental order, or judicial decision as long as the publishing party informs the contracting party thereof immediately and supports them in the defence of such orders or decisions; or (vi) as far as the contractual party is permitted to use or disclose the trade secrets due to mandatory statutory provisions or on the basis of this contract.
- (4) We comply with privacy regulations, esp. when we are granted access to the business or hardware and software of the customer. We ensure that our subcontractors also comply with these provisions, esp. obligations to maintain data confidentiality before accepting activities. We do not aim to process or use personal data on behalf of customers. If the customer cannot exclude our access to personal data, the customer is obliged to submit in advance an agreement to us according to the requirements of § 11 BDSG.

§ 10 Export and import control

- (1) The parties are aware that the services from this contract may be subject to export and import restrictions. In particular, there may be permit requirements and the use of the software or related technologies may be subject to restrictions abroad.
- (2) The customer will comply with applicable export and import control regulations of the Federal Republic of Germany, the European Union, and the United States of America, as well as all other relevant provisions.
- (3) Our contract fulfilment is subject to compliance that there are no obstacles on the basis of national and international regulations of export and import laws and any other legal requirements.

§ 11 Final provisions

- (1) We are entitled to use third parties as subcontractors to provide our installation services.
- (2) Place of performance is at our headquarters in Stuttgart.
- (3) If the customer is a merchant as defined by the HGB, a legal entity under public law or public special assets, jurisdiction is our headquarters in Stuttgart for any disputes arising from the business relationship between us and the customer. We are also entitled to take legal action at the customer's location as well as at any other permissible place of jurisdiction.
- (4) The relations between us and the customer are exclusively subject to the laws of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods dated 11 April 1980 (CISG) does not apply.
- (5) If any individual provision of these installation terms are or becomes invalid, the validity of the remaining provisions will not be affected.



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