

General Software Maintenance Terms and Conditions
of tocario GmbH

§ 1 Scope of validity

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

§ 2 Software maintenance services

- (1) We provide the following software maintenance services (hereinafter "**maintenance services**") in accordance with the provisions of these maintenance terms beyond our warranty obligations due to the software licencing agreement:
 - (a) Troubleshooting errors that occur during the proper use of the software on the basis of response times (§ 3; hereinafter "**troubleshooting**");
 - (b) Provision of software updates (§ 4; hereinafter "**advancements**");
 - (c) Assistance and support services related to malfunctions of the software (§ 5; hereinafter "**support**");Further details, in particular the scope of services, may result from the partnership agreement or our offer on maintenance services to the customers who undertake the provisions of these maintenance terms.
- (2) The maintenance services include troubleshooting errors or other defects which are known to the software regardless of its use by the customer.
- (3) Existing defect claims by the customer are not part of the maintenance services and remain unaffected.
- (4) Not included in our maintenance services are:
 - (a) Services for the software that is not used under our intended conditions of use;
 - (b) Adaptation of the software to a changed hardware or software environment, including adaptation to changed operating systems;
 - (c) The application and adaptation of and on interfaces and third-party APIs;
 - (d) Troubleshooting errors caused by the customer or third parties, including process interference by third party software;
 - (e) Services for the software that has been altered by programming work not carried out by us;
 - (f) Services for computer programmes or portions thereof that are not part of the software;
 - (g) Services for the software that were not installed updates or other fixes by us and the reported error has already been fixed in it, unless its installation is not reasonable for reasons attributable to the customer;
 - (h) Services for an old version of the software if a new version has already been transferred to the customer;
 - (i) Services that can be provided at our headquarters, but are provided on request of the customer at a different location;
 - (j) Instruction and training for software users; and
 - (k) Services that are required because the customer did not meet their cooperation obligations.

§ 3 Troubleshooting

- (1) An error occurs if the software does not have the predesignated functionality in the contractually specified system environment and correct use and this affects it more than just marginally.
- (2) Troubleshooting includes isolating the cause of the error, error diagnosis, and services aimed at correcting the error (esp. security patches and bug fixes). Troubleshooting is carried out under the customary care.
- (3) Troubleshooting services can also be done through a bypass or update delivery and after consultation with the customer by delivery of an upgrade or a new version. However, in the absence of any express agreement the customer has no claim to delivery of an upgrade or a new version.
- (4) Unless expressly agreed otherwise, troubleshooting includes only the latest version of our software, which is available to the customer.
- (5) Troubleshooting is done at our discretion at the customer's location, at the installation location of the software, or by means of remote access over the Internet.
- (6) The customer must report software errors to our support (§ 5). They are classified into the following error classes:
 - (a) Class 1 (operation-interruption error): operation is interrupted. The software can not be used because a programme has crashed;
 - (b) Class 2 (operation-debilitating error): operation is impaired, software functionality is affected, it does not function properly;
 - (c) Class 3: (other error): no impairment of the operation, working with the software is possible, although not consistently within the agreed parameters; user-friendliness needs to be improved. Malfunctions can be bypassed.
- (7) Upon receiving a sufficiently specified description of the error, the error behaviour, affected components of the software, and the steps already taken, the agreed response times to the customer apply. If no response times are agreed, the following response times apply:
 - (a) Error class 1: eight (8) hours;
 - (b) Error class 2: sixteen (16) hours;
 - (c) Error class 3: twenty-four (24) hours.
- (8) In the case of an error class 3, troubleshooting can be postponed by providing software to the next appropriate time at which we will provide the basis of our plans or agreements with the customer. If that date is more than three months in the future, we will notify the customer.
- (9) Response time refers to the time period in which we start troubleshooting. We will inform the customer of the expected troubleshooting time.
- (10) Response times are during our business hours Monday-Friday, except public holidays in Germany (Baden Württemberg) from 9:00am to 5:00pm Central European Time (hereinafter "**business hours**"). If the error message occurs outside our business hours, the response time starts at the beginning of the business hours the next working day. If the error message occurs within our business hours, the unexpired response times runs at the end of the business hours of this day from the start of the business hours the next working day.

§ 4 Advancements

- (1) We strive to continually develop the software. Developing the software may lead to an extension and/or modification of the software, with the result that new functionalities become available, existing functionalities in the process and/or user interface are optimised, or data management is adapted in keeping with state-of-the-art technology.
- (2) We will make software developments available to the customer depending on the scope of the development and the agreements made with the customer, in part without further payment obligations as part of updates, upgrades and/or new versions. There is no claim to a particular development in the absence of any express agreement.

§ 5 Customer support

- (1) We assist the customer by phone or email regarding software errors to the extent set out in the partnership agreement or in the offer.
- (2) Unless otherwise agreed, customer support is provided during our business hours Monday-Friday, except public holidays in Germany (Baden Württemberg) from 9:00am to 5:00pm Central European Time.

§ 6 Customer cooperation and obligations

- (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,
 - (c) to document detected errors in the service provided 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 provide the service 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) The customer grants us access to the software for troubleshooting by remote data transmission through a VPN or on site in their premises or at the installation site.
- (3) The customer secures "lifeline", the access for the management system to the reporting API endpoint (HTTPS / 443, secured data transmission via TLS and Public Key Authentication) and maintains it properly.
- (4) The customer must grant us the right to use third-party systems, as far as this is necessary to provide the service.
- (5) 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.
- (6) The customer must perform an analysis of the environment as part of their options before reporting the error to ensure that the error is not due to system components that are not covered by this contract.
- (7) The customer will agree on a time window during our business hours for the updates we provide that require their involvement or other corrective actions with tocario. These updates and fixes are must be brought in or performed in a joint action between tocario and the customer.
- (8) 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.
- (9) 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).
- (10) 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 at the agreed remuneration on the basis of the applicable daily rate/hourly rates of the customer. Our further legal rights remain unaffected.

§ 7 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, § 12 applies.

§ 8 Remuneration

- (1) Remuneration for maintenance services are according to the partnership contract or our offer.
- (2) Services outside the agreed scope of the maintenance services 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 15 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 pa 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.

§ 9 Rights of use

- (1) If we handover computer programmes or other copyrighted independently protectable works to use as part of this maintenance contract, we grant the customer usage rights to the extent we granted the customers of the maintained software in accordance with the relevant software licencing agreement unless expressly and in writing otherwise agreed.
- (2) Para. 1 shall apply to a claim by the customer on delivery of the underlying source code.

§ 10 Material and legal defects

- (1) If errors are fixed as part of the maintenance services (esp. security patches and bug fixes), the warranty claims are determined by the following paragraphs 2-7. For warranty claims for the use of software as part of the maintenance services (developments, updates, upgrades, new versions, etc.), the provisions of the relevant software licencing agreement apply.
- (2) 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.
- (3) 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.
- (4) 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.
- (5) 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.

- (6) 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.
- (7) 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 § 12 apply.

§ 11 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.

§ 12 Contract period

- (1) The contract is valid for a period of 12 months unless otherwise agreed. Thereafter, the contract will be extended for another 12 month period unless it is terminated by either party with a notice period of six months to the end of each contract period.
- (2) The parties' right to immediate termination for good cause remains unaffected.
- (3) Terminations must be in writing.

§ 13 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.

§ 14 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.

§ 15 Final provisions

- (1) We are entitled to use a third party (e.g. freelance software programmers) as a subcontractor to provide the maintenance services.
- (2) Place of performance is 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 maintenance terms are or becomes invalid, the validity of the remaining provisions will not be affected.

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