

HPE GMBH CUSTOMER TERMS – SUPPORT

1. **Parties.** These terms represent the agreement (“**Agreement**”) that governs the purchase of support services from the Hewlett-Packard GmbH (“**HPE**”) by the Customer identified below (“**Customer**”).
2. **Orders.** “**Order**” means the accepted order including any supporting material which the parties identify as incorporated either by attachment or reference (“**Supporting Material**”). Supporting Material may include (as examples) support product lists, hardware or software specifications, standard or negotiated service descriptions, data sheets and their supplements, and statements of work (SOWs), published warranties and service level agreements, and may be available to Customer in hard copy or by accessing a designated HPE website.
3. **Scope and Order Placement.** These terms may be used by Customer either for a single Order or as a framework for multiple Orders. In addition, these terms may be used on a global basis by the parties’ “**Affiliates**”, meaning any entity controlled by, controlling, or under common control with a party. The parties can confirm their agreement to these terms either by signature where indicated at the end or by referencing these terms on Orders. Affiliates participate under these terms by placing orders which specify service delivery in the same country as the HPE Affiliate accepting the Order, referencing these terms, and specifying any additional terms or amendments to reflect local law or business practices.
4. **Order Arrangements.** Customer may place orders with HPE through our website, customer-specific portal, or by letter, fax or e-mail. The order has to be accepted by HPE. Where appropriate, orders must specify a service delivery date. If Customer extends the service delivery date of an existing Order beyond ninety (90) days, then it will be considered a new order.
5. **Prices and Taxes.** Prices will be as quoted in writing by HPE or, in the absence of a written quote, as set out on our website, customer-specific portal, or HPE published list price at the time an order is submitted to HPE. Prices are exclusive of taxes, duties, and fees (including installation, shipping, and handling) unless otherwise quoted. If a withholding tax is required by law, please contact the HPE order representative to discuss appropriate procedures.
6. **Invoices and Payment.** Customer agrees to pay all invoiced amounts within thirty (30) days of HPE’s invoice date. HPE may suspend or cancel performance of open Orders or services if Customer fails to make payments when due.
7. **Support Services.** HPE’s support services will be described in the applicable Supporting Material, which will cover the description of HPE’s offering, eligibility requirements, service limitations and Customer responsibilities, as well as the Customer systems supported, and which will be made available by HPE upon request.
8. **Eligibility.** HPE’s service, support and warranty commitments do not cover claims resulting from:
 1. improper use, site preparation, or site or environmental conditions or other non-compliance with applicable Supporting Material;
 2. Modifications or improper system maintenance or calibration not performed by HPE or authorized by HPE;
 3. failure or functional limitations of any non-HPE software or product impacting systems receiving HPE support or service;



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4. malware (e.g. virus, worm, etc.) not introduced by HPE; or
 5. abuse, negligence, accident, fire or water damage, electrical disturbances, transportation by Customer, or other causes beyond HPE's control.
9. **Dependencies.** HPE's ability to deliver services will depend on Customer's reasonable and timely cooperation and the accuracy and completeness of any information from Customer needed to deliver the services.
10. **Change Orders.** We each agree to appoint a project representative to serve as the principal point of contact in managing the delivery of services and in dealing with issues that may arise. Requests to change the scope of services or deliverables will require a change order signed by both parties.
11. **Services Performance.** Services are performed using generally recognized commercial practices and standards. Customer agrees to provide prompt notice of any such service concerns and HPE will re-perform any service that fails to meet this standard.
12. **Product Warranty Claims.** Defects in deliverables which affect the designated use not only insignificantly authorize the Customer to enforce warranty claims. The Customer has at first only the right of supplementary performance within a reasonable period of time. The supplementary performance contains at sole discretion of HPE either rectification of defects or delivery of a new product. The interests of the Customer will be considered appropriately. If the supplementary performance fails or is not realizable because of other reasons the Customer may terminate the Order according to clause 22. Compensation for damages or reimbursement of expenses are excluded in the case of warranty claims, unless stated otherwise in clause 19. However HPE has to pay all expenses which are necessary for the supplementary performance as far as the expenses are not based on the fact that the products were shipped to another place than the place of delivery afterwards, unless the shipping is in accordance with the normal use of the products. Any warranty claim will expire if any possible defect is based on the fact that the Customer or any third party, changes products without prior approval of HPE, has used or repaired them improperly, or products were installed, operated or maintained not in accordance with HPE guidelines. The Customer has to report defects immediately to HPE upon written notice. If the complain of defects is carried out wrongly HPE is entitled to ask the Customer for compensation of the occurred expenses of HPE. For warranty claims exists a limitation period of one year starting with the day of delivery or if applicable with the conclusion of the installation or (if the Customer delays the installation of HPE) at the latest 30 days after the delivery date.
13. **Remedies.** This Agreement states all remedies for warranty claims. To the extent permitted by law, HPE disclaims all other warranties.
14. **Intellectual Property Rights.** No transfer of ownership of any intellectual property will occur under this Agreement. Customer grants HPE a non-exclusive, worldwide, royalty-free right and license to any intellectual property that is necessary for HPE and its designees to perform the ordered services.
15. **Intellectual Property Rights Infringement.** HPE will defend and/or settle any claims against Customer that allege that an HPE-branded product or service as supplied under this Agreement infringes the intellectual property rights of a third party. HPE will rely on Customer's prompt notification of the claim and cooperation with our defense. HPE may modify the product or service so as to be non-infringing and materially equivalent, or we may procure a license. If these options are not available, we will refund to Customer the amount paid for the affected product in the first year or the depreciated value thereafter or, for

support services, the balance of any pre-paid amount or, for professional services, the amount paid. HPE is not responsible for claims resulting from any unauthorized use of the products or services.

- 16. Confidentiality.** Information exchanged under this Agreement will be treated as confidential if identified as such at disclosure or if the circumstances of disclosure would reasonably indicate such treatment. Confidential information may only be used for the purpose of fulfilling obligations or exercising rights under this Agreement, and shared with employees, agents or contractors with a need to know such information to support that purpose. Confidential information will be protected using a reasonable degree of care to prevent unauthorized use or disclosure for 3 years from the date of receipt or (if longer) for such period as the information remains confidential. These obligations do not cover information that: i) was known or becomes known to the receiving party without obligation of confidentiality; ii) is independently developed by the receiving party; or iii) where disclosure is required by law or a governmental agency.
- 17. Personal Information.** HPE does not intend to process personal data on behalf of Customer in providing services. If this however occurs in the context of the particular order additional regulations apply in the context of the commissioned data processing according to appendix "Data Protection". In addition HPE processes personal data for its own purposes automated and the contact data of the Customer contact person in accordance with the terms of the Federal Data Protection Acts inside and outside of the Federal Republic of Germany and the European Union.
- 18. Global Trade compliance.** Services provided under these terms are for Customer's internal use and not for further commercialization. HPE may suspend its performance under this Agreement to the extent required by laws applicable to either party.
- 19. Limitation of Liability.** For violation of obligations and tort, HPE and its vicarious agents are liable without limitation in case of wilful conduct and gross negligence. The same applies to malicious concealment of a defect. As far as the violation on the part of HPE and its vicarious agents is not considered as wilful or gross negligent the liability under this Agreement is limited to breaches of essential obligations and per Order to a maximum amount up to the greater of 1 mio. € or the amount payable by the Customer to HPE for the relevant Order. Any further liability is excluded, in particular such for consequential damages and loss of profit or data. This limitation does not refer to damages due to unauthorized use of intellectual property, life threatening, bodily injury or adverse health effects and claims under the Product Liability Act. In case of provision of personnel for work subject to Customer's supervision and direction, HPE shall only be liable if HPE had wilfully or gross negligently failed to choose such personnel in accordance with Customer's requirements which had been notified to HPE in advance. Any liability shall be excluded if the damage had also occurred in case of faultless selection of such personnel.
- 20. Disputes.** If Customer is dissatisfied with any services purchased under these terms and disagrees with HPE's proposed resolution, we both agree to promptly escalate the issue to a Vice President (or equivalent executive) in our respective organizations for an amicable resolution without prejudice to the right to later seek a legal remedy.
- 21. Force Majeure.** Neither party will be liable for performance delays nor for non-performance due to causes beyond its reasonable control, except for payment obligations.
- 22. Termination.** Either party may terminate this Agreement on written notice if the other fails to meet any material obligation and fails to remedy the breach within a reasonable period after being notified in writing



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of the details. If either party becomes insolvent, unable to pay debts when due, files for or is subject to bankruptcy or receivership with regard to the own assets, the other party may terminate this Agreement and cancel any unfulfilled obligations. Any terms in the Agreement which by their nature extend beyond termination or expiration of the Agreement will remain in effect until fulfilled and will apply to both parties' respective successors and permitted assigns.

- 23. General.** This Agreement represents our entire understanding with respect to its subject matter and supersedes any previous communication or agreements to the identical subject matter of the agreement that may exist. Modifications to the Agreement will be made only through a written amendment signed by both parties. This mandatory written form also applies to the alteration of the mandatory written form. Both parties may not set off against claims of the other party or claim any right of retention unless the counterclaim is uncontested or has been finally decided upon by a court of competent jurisdiction. The Agreement will be governed by the laws of this country in which the specific order was accepted – excluding the UN Sales Convention. For all contractual and with the concluded agreement associated claims inside this country the local courts at the registered office of HPE will have jurisdiction. This also applies to a summary procedure, where the plaintiff relies entirely on documentary evidence.