

General Terms and Conditions concerning software maintenance

I. Preface

- 1) The following terms and conditions of Open-Xchange concerning the maintenance of the Software (GTC Maintenance) apply to all customers of Open-Xchange concerning the delivery of software maintenance services.
- 2) The GTC Maintenance applies exclusively. Contrary, divergent, or additional terms and conditions of the customer with respect to the maintenance service rendered by Open-Xchange, including any such terms and conditions contained on ordering documents, shall not apply and are expressly objected to by Open-Xchange unless Open-Xchange has expressly consented to their applicability in writing. The GTC Maintenance also applies if Open-Xchange provides deliveries and services unconditionally with knowledge of customer's contrary, diverging, or additional terms and conditions.

II. Definitions

- 1) Public PTF = modification of a software with the aim of solving one or more specific problems.
- 2) Minor Release = modification of a software with the aim of solving several errors; additionally function expansions or API expansions not modifying or interfering with the current functionality.
- 3) Major Release = modification of a software with regard to an extended functionality. Essential functional modifications as well as modifications in the API, configurations and database structures are possible.

III. Offer and Acceptance

- 1) The customer's order is a binding offer. Open-Xchange can accept such an offer within two weeks by sending an order confirmation or by delivering the ordered goods (i.e. the maintenance key) within such two week period.

IV. Subject of the contract

- 1) Open-Xchange provides the maintenance services regarding the software mentioned in the delivery note (Software) for the contractually agreed duration. Open-Xchange maintains the Software in the current version named in the maintenance contract taking into account prior maintenance services provided up to the point of the current maintenance services.

2) Open-Xchange grants the customer the right to use the PTFs, Minor- and Major Releases delivered in pursuance of the maintenance contract for the duration of the maintenance contract.

V. Extent of Maintenance Services

1) The software maintenance services include the delivery of PTF's, Minor- and Major releases but not the installation of the Software, PTF, Minor- or Major Releases. The software maintenance services do not include any support services or consulting services. Such additional services can be obtained by entering into separate written agreements with Open-Xchange for such services (cf. section V.)

2) Open-Xchange will provide the customer with specific latest releases of the Software in order to keep the Software up to date and to prevent malfunctions. Open-Xchange provides the customer with PTFs, Minor- and Major Releases of the Software for this purpose. These respective latest releases of the Software are collectively called "New Versions".

3) Open-Xchange may additionally provide successor products from time to time. The supply of these successor products is not part of the maintenance services.

4) The customer may only receive the maintenance services if the customer has installed the Open-Xchange Report Client (cooperation obligation on the part of the customer).

VI. Additional Services

1) If a service requested by the customer due to a failure report and provided by Open -Xchange is not covered by the maintenance contract as defined in section IV, customer shall pay Open-Xchange the applicable fees based on the applicable price lists.

2) Upon the customer's request for additional services not set forth on the price lists, Open-Xchange will perform such additional services if performance is commercially feasible and subject to customer's payment of Open-Xchange's applicable fees.

VII. Cooperation Responsibilities

1) The customer shall support Open-Xchange free of charge in every respect in Open-Xchange's provision of the maintenance services. This includes, in particular, submitting written deficiency reports and problem reports upon request and providing further data and protocols that Open-Xchange deems appropriate for the analysis of

defects.

- 2) The customer shall install and check New Versions and report visible defects immediately.
- 3) The customer shall report occurring errors immediately and shall support Open-Xchange in the course of error analysis and error recovery within the bounds of what is reasonable. The customer shall install the Open-Xchange Report Client and send the automated number of active users via the Report Client. If the customer does not install the Open-Xchange Report Client and send Open-Xchange the relevant automated reports on a regular basis, Open-Xchange shall not be obliged to perform maintenance services. Further, Open-Xchange may terminate this contract immediately without notice if the customer fails to comply, in whole or in part, with the foregoing obligations.

VIII. Fees and Taxes

- 1) The annual maintenance fee shall apply regardless of whether and how often the maintenance services under the terms and conditions of the maintenance contract are made use of.
- 2) The maintenance fee is to be paid annually in advance. The payment of the remuneration for additional services according to section V. is to be paid immediately after the additional services have been provided. All payments shall be due upon receipt of the invoice. All fees and payments are nonrefundable.
- 3) All prices shall be exclusive of VAT applicable at the time the services are provided.
- 4) On each annual anniversary date of this Agreement, Open-Xchange shall be entitled to adjust the maintenance fee and applicable price lists to Open-Xchange's then-current fees and prices. If the increase of the maintenance fee exceeds 10 % compared to the previous year, the customer is entitled to terminate the maintenance contract by providing Open-Xchange with ten (10) days prior written notice.

IX. Terms of Contract and Cancellation

- 1) This contract shall be effective on the day following the delivery of the Maintenance Key to the customer. The Maintenance Key shall be deemed delivered to customer as of the date of the delivery is made by Open-Xchange.
- 2) If not agreed otherwise, the initial term of this maintenance contract shall be one

year from the delivery date and it shall automatically be extended for successive one year periods unless terminated in writing by either party with notice to the other party at least three months prior to the expiration of the then-current term.

- 3) Either party may terminate this maintenance contract immediately upon any material breach of this contract by the other party.
- 4) Notice of termination shall be given in writing in order to be valid.
- 5) If the maintenance contract is cancelled or terminated, Open-Xchange shall be entitled to remuneration for the maintenance services delivered up to and including the date of termination of the contract on a pro rata basis.

X. Delay

- 1) If the customer sustains a loss because of the delay of the maintenance services caused by the negligence of Open-Xchange, the customer may claim, at the exclusion of further claims, compensation for delay. Such compensation for delay shall be as follows: for each full week of the delay 0.5 % of the value of the annual maintenance fee, but in no event more than five percent 5% of the annual maintenance fee.
- 2) Subject to sections XI and XII, the customer shall not be entitled to make further claims, including without limitation claims for damages, or receive any additional remedies. This Section X sets for customer's exclusive remedy and Open-Xchange's sole liability to customer for delays in the performance of maintenance services.

XI. Default

- 1) If the maintenance service is not provided in all material respects in accordance with this contract, Open-Xchange shall promptly remedy its performance without additional charge to the customer. Customer shall immediately notify Open-Xchange of any deviation, but no more than 2 weeks after customer became aware or should have become aware that the maintenance service has not been provided in all material respects in accordance with this contract. If Open-Xchange is unable to remedy the deficiency, the customer shall be entitled to terminate this contract by providing written notice.
- 2) If this contract is terminated pursuant to the foregoing, Open-Xchange shall be entitled to remuneration for the services delivered up to and including the date of termination of the contract on a pro rata basis.
- 3) Subject to section XII, the customer shall not be entitled to make further claims,

including without limitation claims for damages, or receive any additional remedies. This Section XI sets for customer's exclusive remedy and Open-Xchange's sole liability to customer for failure to perform the maintenance services in all material respects in accordance with this contract.

XII. Liability

- 1) Open-Xchange shall be – for whatever reason – liable for willful negligence without limitations.
- 2) Open-Xchange shall also be liable for gross negligence of legal representatives and executives without limitations.
- 3) Open-Xchange shall be liable for damages caused by assistants with gross negligence, limited to foreseeable damages typical for the contract at the time of its conclusion. Par. 6 is not thereby affected.
- 4) In case of a slightly negligent violation of a cardinal contractual obligation Open-Xchange's liability shall be limited to the foreseeable damage typical for the contract at the time of its conclusion. In all other cases the liability of Open-Xchange for damages caused with slight negligence is excluded. Par. 6 is not thereby affected.
- 5) In the cases of par. 3 and par. 4 Open-Xchange's liability for each claim shall be limited to 500 % of the annual maintenance fee.
- 6) The liability for personal injuries, i.e. for damages to the life, the body or the health, shall be unlimited.
- 7) For any data loss, Open-Xchange shall only be liable if Open-Xchange caused the destruction deliberately, with gross negligence or due to a breach of a cardinal contractual obligation, and if the customer concurrently ensured that the data can be reconstructed from existing data media at reasonable costs.

XIII. General Provisions

- 1) Place of fulfillment and jurisdiction for business customers for all claims and legal disputes arising from the maintenance contract shall be Nuremberg, Germany. However, in deviation from this, Open-Xchange shall have the right to file an action at the court competent for the customer's place of residence or place of business.
- 2) The maintenance contract is governed by the law of Germany, without regard to the U.N. Convention on Contracts for the International Sale of Goods.

- 3) If any provision of the maintenance contract is held unenforceable by a court of competent jurisdiction, the remainder of the maintenance contract shall continue in full force and effect.
- 4) The maintenance contract including the GTC Maintenance constitutes the complete and exclusive understanding and agreement of Open-Xchange and the customer relating to the subject matter hereof and supersede all prior or contemporaneous understandings, agreements and communications with respect to the subject matter hereof.
- 5) Any deviation from these conditions or alterations in contractual agreements must be made in writing. The requirement of form shall also apply to the alteration or the complete waiver of this written form clause.

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