

# General business terms for leasing of hardware and standard software

## -VM Bitkom-

(VM Bitkom, Version 3.0)

Page 1

### 1. Subject matter of the contract, services, rights of use

- 1.1** For the duration of this contract, the provider leases to the customer the hardware and/or software agreed in the contract.

Hardware and software ("leased objects") are leased separately. If leased objects are leased as a unified system, it is called a "leased system". Insofar as a regulation applies to leased objects as well as leased systems, the term "leased item" is used.

Hardware is supplied together with an installation manual. The operating manual (user documentation or online help) and installation manual can be provided to the customer electronically at the provider's discretion, unless this is unreasonable for the customer.

Software is supplied in executable form (as an object program) including an operating manual (user documentation or online help) and installation manual. The operating manual and installation manual can also be provided to the customer electronically, unless this is unreasonable for the customer.

Items are leased and transferred only for the contractually agreed use.

The properties, scope, operating conditions and system environment of a leased item are determined, unless agreed otherwise, from the product description and the operating manual in that order.

- 1.2** Unless agreed otherwise in the contract, the customer chooses leased items independently on the basis of their technical and functional requirements.

- 1.3** The provider delivers the leased property in exchange for separate remuneration to the installation site stated in the contract.

The provider may also perform assembly and/or installation and bring about operational readiness of leased property through separate settlement. For leased systems, the provider always undertakes to bring about operational readiness, including installation. For such leased systems, the contract also contains the test cases / procedures to be agreed for determining operational readiness according to item 4.

Insofar as conduction of test cases / procedures is agreed for a leased system, the lessor also owes this at the times and according to the criteria stipulated in the contract.

The provider's obligation to maintain leased items in working condition refers solely to their contractually required condition at the time of the contractually agreed start of the lease.

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## -VM Bitkom-

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Page 2

Services above and beyond this, e.g. adaptations, modifications to software as well as creation of interfaces to third-party programs, analysis, planning and associated consulting services must be agreed and remunerated separately. This also applies to changes which occur in operating conditions or the system environment after contract conclusion and which are not initiated by the provider.

**1.4** The provider can make new versions of leased software delivering at least the same performance in terms of content and scope available to customer for use. The agreements existing between the parties apply to these new versions. The customer agrees to only use these new versions after a reasonable time period of time, usually not exceeding three months, if this is not unreasonable.

**1.5** Leased items may only be used by the customer and only for the purposes agreed in the contract. Any further use, including any sublease, requires the provider's prior written approval.

Unless agreed otherwise, the provider shall grant the customer a non-exclusive right to use the software on-site during the term of lease for their own, internal purposes within the framework of the contractually stipulated, intended use.

**1.6** The provider is authorized to take appropriate technical measures to prevent use contrary to the contract. This must not impair use of the services according to the provisions of the contract.

**1.7** The provider may withdraw the customer's right of use and/or cancel the contract if the customer substantially exceeds their rights of use or breaches regulations for preventing unauthorized use. The provider shall, as a rule, set an appropriate period of remedy for the customer beforehand.

Sole withdrawal of the right of use does not simultaneously constitute cancellation of the contract. After such withdrawal, the customer must confirm the termination of use to the provider in writing.

The provider's entitlement to remuneration for use above and beyond the agreed scope remains unaffected.

The customer is entitled to renewed granting of the right of use after proving that they have ceased non-contractual use and prevented further non-contractual use.

## 2. Leasing fee

**2.1** Leasing fees include remuneration for provision of leased items and their maintenance in contractually compliant condition. Further services such as delivery of consumables shall be remunerated separately.

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Page 3

**2.2** Unless agreed otherwise on an individual basis, leasing fees shall be paid monthly in advance no later than the fifth working day of each calendar month to the payment office at no charge and without any deductions.

For leased systems, the obligation to pay the leasing fee begins on confirmation of operational readiness in accordance with Item 4 or with productive use of the leased system by the customer, the earlier time being authoritative. If payment of a leasing fee begins during a month, each day shall be charged as 1/30 of the monthly fee.

**2.3** The provider reserves the right to increase the leasing fee for the first time on expiry of 12 months, and no more than once a year with a notice period of 3 months effective at the end of a month, insofar as the energy or staff costs incurred for maintenance of the leased item have increased. As soon as the annual remuneration increases by more than 5%, the customer is authorized to terminate the contract from the time the increase takes effect, subject to a notice period of six weeks after receipt of the request for the increase in leasing fee. If relevant costs are reduced, the customer can also request a corresponding reduction in the leasing fee, for the first time after 12 months.

**2.4** The provider can demand additional remuneration for their expenditure insofar as:

- a) in particular, a reported malfunction relates to use of a leased item in an unapproved environment or a leased item modified by the customer or third parties,
- b) additional expenditure is incurred due to the customer not having met their obligations properly (refer to item 3, in particular).

If the provider is authorized to demand remuneration for their expenditures above and beyond the leasing fee, this shall be charged according to the accounting segments and price lists of the provider concerning daily, hourly and allowance rates applicable on provision, unless agreed otherwise by the contractual partners in writing.

### 3. Customer's obligations

**3.1** The customer shall inform the provider in writing of any intended modifications to the agreed operating conditions or system environment. Item 8.4 of the document titled 'AV Bitkom' applies here.

If the provider's expenditure rises due to a disruption arising in the customer's sphere of responsibility (e.g. network operator), the provider may demand remuneration for the resultant, proven additional expenditure. Item 2.4, paragraph 2 applies here.

**3.2** The customer undertakes to handle leased items with care and protect them against damage. They shall ensure proper use and correct operation by sufficiently qualified staff.

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## -VM Bitkom-

(VM Bitkom, Version 3.0)

Page 4

The customer shall observe the provider's instructions concerning maintenance, care and use, in particular, the notes in the supplied operating manual (user documentation and/or online help) and installation manual, to the extent reasonable for said customer.

Labelling, in particular, plates, serial numbers, inscriptions, copyright notices, markings or the like, may not be removed, modified or rendered illegible.

- 3.3** Following prior announcement, the customer shall grant the provider's employees and agents free access to leased items within the provider's standard business hours for the purpose of maintenance and repair work, unless justified security interests of the customer contradict this.

## 4. Determination of a leased system's operational readiness

After a leased system has been delivered, the provider and customer shall jointly determine its contractual readiness for operation. To this end, the provider and customer shall convince themselves, on the basis of test cases / procedures (see item 1.3), that the leased system is contractually compliant. Insofar as operational readiness is given, the customer shall confirm this on a corresponding form of the provider.

## 5. Modifications to leased items / changes in installation site

- 5.1** The provider is authorized to modify leased items for maintenance purposes. Improvements may only be carried out if they are reasonable for the customer and do not negatively affect contractual use of a leased item. The provider shall inform the customer of corresponding measures well in advance. Costs incurred by the customer to restore contractual options of use as a result of these measures shall be compensated by the provider.
- 5.2** Modifications and attachments to a leased item by the customer require the provider's prior, written approval. This applies, in particular, to attachments or internal fittings and as well as combinations of the leased item with other devices, IT systems or networks. Excluded from this are combinations which serve the leased item's intended purpose. Actions of the customer related to supplied computer programs and not subject to approval under § 69d of the German copyright act remain unaffected. When returning a leased item, the customer shall restore its original condition on the provider's request.
- 5.3** Installation of a leased item at a location other than that defined in the lease contract requires the provider's prior, written approval. The provider shall not unreasonably refuse to give their approval. The provider may demand that transport and new installation be carried out at appropriate prices by them or by qualified professionals designated by said provider. The customer shall bear the additional expenditures and consequential costs associated with relocation as well as any additional costs of maintenance and upkeep.

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Page 5

### 6. Material defects

- 6.1** The provider undertakes to maintain leased items for the duration of the leasing period in a condition which is suitable for contractual use.
- 6.2** Just minor reductions in suitability for contractual use shall not give rise to claims regarding defects of the leased item. Also ruled out are claims concerning defects if the deviation from the contractual condition is due to incorrect use of the leased item, or its use under non-agreed operating conditions or in a non-agreed system environment. The same applies to deviations due to special external influences not considered in the contract.
- 6.3** Strict liability of the provider pursuant to section 536a paragraph 1 German Civil Code due to defects already existent at the time of contract conclusion is ruled out.
- 6.4** Item 2.4 of 'AV Bitkom' applies, in particular, to reports about defects. Unless agreed otherwise, the customer shall use the provider's relevant forms and procedures. Item 8.4 of 'AV Bitkom' applies correspondingly. If necessary, the customer shall also support the provider appropriately in remedying defects.
- 6.5** Defects shall be remedied during the provider's business hours. The provider shall be granted an adequate period of time. With the customer's approval, the provider may replace a leased item or individual components of a leased item for the purpose of remedy. The customer shall not unreasonably refuse to give their approval.
- 6.6** Cancellation by the customer according to section 543 paragraph 2 clause 1 item 1 German Civil Code because contractual use was not granted is only permissible if the provider was given sufficient opportunity to remedy the defects and failed to do so. Failure to remedy a defect can only be presumed if remedy proves impossible, is refused or unreasonably delayed by the provider, the prospects of success are justifiably doubted or if this is unreasonable for the customer due to other factors.
- 6.7** The customer's rights arising from warranty for defects are ruled out insofar as the customer makes modifications, or has such modifications made, to a leased item without the provider's prior approval, unless the customer proves that the modifications do not have any effects on analysis and defect remedy which are unreasonable for the provider. The customer's rights pertaining to defects remain unaffected insofar as the customer is authorized to make modifications, in particular, within the framework of the right to self-remedy of defects as per section 536a paragraph 2 German Civil Code and if these were carried out correctly and are comprehensibly documented.

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Page 6

- 6.8** The limitation period for claims based on material defects is one year from the statutory beginning of limitation. Any longer periods stipulated by the law in the event of wilful or grossly negligent breaches of the provider's obligations, fraudulent concealment of a defect, or harm to life, body or health shall remain unaffected. The statutory period of limitation as per section 548 German Civil Code for the provider's compensation claims due to modifications to, or deterioration of, leased objects or systems remains unaffected.
- 6.9** Item 6 of 'AV Bitkom' applies additionally to compensation for damages and expenditures. Section 578b German Civil Code remains unaffected.

## 7. Contract duration and end of lease

- 7.1** The contractually agreed services shall be provided from the date specified in the contract, initially for the duration specified in the contract. During this minimum term, premature ordinary termination is ruled out for both parties.
- 7.2** The contract may be terminated with a notice period of three months, at the earliest on expiry of the minimum term. If this does not take place, the contract shall be extended by one more year, unless it was terminated ordinarily with a notice period of 3 months before expiry of the respective extension period. Section 545 German Civil Code does not apply.
- 7.3** The customer's termination rights as per items 2.3 and 6.6, as well as each contractual partner's right to extraordinary termination for important reasons remain unaffected.
- 7.4** Every declaration of termination must be in writing to be effective. Item 8.4 of 'AV Bitkom' applies here.

## 8. Return of leased items

- 8.1** On termination of the contract, the customer shall return leased items in full to the provider in a condition compliant with contractual use, including any submitted original data carriers, operating manuals (user documentation or online help) and installation manuals. Any created copies and downloads shall be deleted or destroyed entirely and finally.
- 8.2** The customer undertakes to delete all data not pertaining to leased items before their return, such that the data cannot be reconstructed.
- 8.3** Full return and deletion or destruction as per Items 8.1 and 8.2 must be confirmed to the provider in writing at their request.
- 8.4** When a leased item is returned, the contractual partners shall prepare a record of any occurrences of damage or defects on the leased item, if the provider requests this.

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(VM Bitkom, Version 3.0)

Page 7

- 8.5** The customer shall bear the costs of dismantling, packaging and transporting leased items back. This does not apply insofar as the provider is obliged to bring about operational readiness according to the contract.

## **9. Validity of 'AV Bitkom'**

Bitkom's general contractual terms (document titled 'AV Bitkom') apply additionally.

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