

## **1 General information**

- 1.1 For agreements concerning Bacher Services, these terms and conditions form the contractual framework (hereinafter "Agreement") for the cooperation between Bacher Systems EDV GmbH (hereinafter "Bacher Systems") and its customers. They are therefore a binding supplement to offers concerning Bacher Services and apply in addition to Bacher Systems' "General Terms and Conditions for IT Services" or the terms and conditions agreed with the customer in their place, both hereinafter "generally agreed terms and conditions".
- 1.2 If Bacher Services have already been agreed in existing contracts (e.g. existing service contracts or operating service contracts), the terms and conditions agreed at that time shall prevail and continue to apply to the services agreed therein.

## **2 Scope of services**

- 2.1 The scope of the services to be provided by Bacher Systems is defined in the Agreement by specifying the selected service packages. The details of the service packages are set out in service descriptions (e.g. for "Bacher Infrastructure Services").
- 2.2 Bacher Systems does not provide the following services, among others, within the framework of the Agreement and will charge them at the agreed hourly rates if necessary:
  1. Services that go beyond the agreed scope, as well as services that become necessary due to force majeure or the fault of the customer or third parties.
  2. Services that are required because the customer...
    - a. does not fulfil its obligations to cooperate as agreed; or
    - b. has not created the necessary prerequisites as agreed; or
    - c. has made changes to systems without consulting Bacher Systems, which lead to additional efforts (e.g. clarifying the situation, restoration) on the part of Bacher Systems
  3. Efforts due to legal changes.
  4. Efforts due to uncommunicated changes.
  5. Services for and on products that are not covered by the Agreement.

## **3 Extensions and reductions**

- 3.1 If the quantity structure (including number of systems or similar) changes independently of projects handled with Bacher Systems, i.e. due to customer measures, the customer shall inform Bacher Systems of this change in writing. This is a prerequisite, among other things, for the onboarding or offboarding of the systems in the monitoring system to take place and for the adjustment to be documented in the quantity structure.
- 3.2 For components not supplied by Bacher Systems, a transition period of 30 days from the date of inclusion in the Agreement applies. Any faults that occur during this time will already be remedied within the framework of the Agreement, but the customer will be billed for the effort incurred as well as any costs incurred for updating software versions.
- 3.3 In the case of extensions to the quantity structure, the agreed extension price and the effort for the transition will be charged. As long as extensions are not reported, they are not covered by the flat-rate contract fee.
- 3.4 If the quantity structure changes, the contract fee will be recalculated. The extent of the price change can be determined as soon as the changes are specifically known.

#### **4 Prerequisites and obligations to cooperate of the customer**

- 4.1 The customer is obliged to create the agreed prerequisites and to fulfil its obligations to cooperate. Even prerequisites that are not explicitly stated, which are a matter of course for IT operations, are to be created by the customer. These include, in particular, power and network connections as well as necessary firewall activation for all systems required to provide the service (e.g. the monitoring poller systems during system operation).
- 4.2 The customer is responsible for additional efforts or delays that arise because agreed prerequisites are not created or cooperation obligations are not fulfilled in the agreed manner.
- 4.3 The customer is liable for any physical damage to systems owned by Bacher Systems installed in the customer's environment (e.g. monitoring bollards). This liability includes damage caused by improper handling, negligence or intentional behaviour by the customer or third parties, as well as damage caused by force majeure. The customer is fully responsible for the costs of repairing or replacing the damaged systems.

#### **5 Impairment of service performance**

- 5.1 The service is not provided in accordance with the contract by Bacher Systems if the service deviates significantly from the agreed specifications and service data and the customer immediately notifies Bacher Systems of this deviation in writing. As far as is reasonable, the customer shall implement measures that make it easier to determine the deviation and its cause.
- 5.2 If the service is not provided in accordance with the contract, Bacher Systems is entitled to remedy the deviation in a suitable manner of its own choosing. The customer shall grant Bacher Systems a reasonable period of time for the remediation. If the deviation is not remedied within this period, the customer shall notify Bacher Systems in writing, setting a reasonable grace period and describing the damage already resulting from the deviation or that still threatens to occur. Both parties shall then immediately discuss how to proceed and Bacher Systems shall initiate the necessary measures to eliminate the deviation. In this case, the customer may demand a reasonable decrease in the remuneration (reduction).
- 5.3 Delayed fulfilment of services occurs if Bacher Systems fails to meet the deadlines or time limits expressly agreed in writing as binding for fulfilment and these are of significant importance to the customer. If such binding deadlines or time limits are not met or if there is a risk of delay, Bacher Systems shall inform the customer of this. If the deadline or time limit cannot be met due to an unforeseen event for which Bacher Systems is not responsible, the deadline or time limit shall be extended by the duration of the occurrence of this event.
- 5.4 Claims for services not provided in accordance with the contract only exist if they are based on circumstances for which Bacher Systems is responsible.
- 5.5 The provisions agreed under this section conclusively regulate all claims of the customer for the respective case of the service not provided in accordance with the contract. The customer has no further rights against Bacher Systems. However, the right to terminate for good cause or the right to compensation for damages remains unaffected.
- 5.6 Insofar as there are claims for damages due to services not provided in accordance with the contract or other breaches of duty in the context of the provision of services, the limits of liability apply in accordance with the generally agreed terms and conditions.
- 5.7 Claims for services not provided in accordance with the contract, irrespective of the legal basis, shall become statute-barred one year after the provision of services.

## **6 Payment for services**

- 6.1 The agreed fee covers all services specified in the Agreement, including the ancillary costs for these services such as travel, accommodation, and transport costs.
- 6.2 In the case of fixed-term contracts, the fees remain fixed for the entire duration of the contract. In the case of open-ended contracts, the fees remain fixed for the period for which they were paid according to the billing interval.
- 6.3 In addition, the fees shall change with the next billing period in accordance with the change in the Consumer Price Index 2020 published monthly by the Federal Statistical Office of Austria, or an index replacing it. Fluctuations in the index number upwards or downwards up to and including 5% shall not be taken into account.
- 6.4 The index number published for the month in which the offer was submitted shall be used as the reference value (base index) for value protection for the first fee adjustment. The value adjustment is based on the percentage difference between the target index and the base index.
- 6.5 If the services also contain contributions from third parties (e.g. product manufacturers) and they change their prices or if the underlying exchange rates change, the fee based on this shall be adjusted with the next billing period. Bacher Systems shall inform the customer in writing of these upcoming changes in fees no later than one month before the next billing period and, upon request, provide access to the documents justifying this change.
- 6.6 If this change would increase the previous fees by more than 5% beyond the index-related increase and the customer does not wish to continue the Agreement with the increased fees, the customer shall inform Bacher Systems accordingly in writing within four weeks after receiving the price increase information. The customer then has the right to terminate the Agreement with a notice period of two calendar months. Otherwise, the changed fees shall be deemed to have been agreed after this period has expired.

## **7 Commencement and duration, termination**

- 7.1 Unless otherwise agreed in a specific case, the contract commences with the start of the manufacturer support contract (communicated with the bill). The contract has the agreed term and can then be terminated by either party after twelve months, subject to a notice period of three months.
- 7.2 In the case of several contracts whose scope of services build on each other, the contracts above then automatically end with the end of those contracts on which they are based; for example, an operating contract ends upon the end of a support contract required for it.
- 7.3 In order to align the term with existing contracts, Bacher Systems is entitled to adjust terms in consultation with the customer.
- 7.4 If the start of the provision of services is delayed due to circumstances on the part of the client, Bacher Systems reserves the right to begin invoicing the services no later than three (3) months after the conclusion of the contract or the agreed start of the contract.
- 7.5 If the customer does not provide the access authorisations required to provide the services as agreed, Bacher Systems reserves the right to terminate the contract by giving one month's notice to the end of the month.

- 7.6 The right to extraordinary termination for good cause remains unaffected by this provision. Good cause shall exist, in particular,
- a) if one of the contracting parties violates essential contractual obligations and does not remedy them within a reasonable period of time despite a written request.
  - b) if insolvency proceedings are opened against the assets of one of the contracting parties or the opening of such proceedings is rejected due to lack of assets or if the contracting party actually becomes insolvent (however, this is subject to the provision in Section 25a of the Insolvency Code).

## **8 Terms of payment**

- 8.1 Unless otherwise agreed in a specific case, the following terms shall apply.
- 8.2 For services to be rendered on an ongoing basis, the bill shall be issued twelve months in advance and must be paid within 30 days after billing. For systems that supplement the agreed scope of services during the billing period, the billing shall be made pro rata for the current period after the supplement. From the following billing period, the new total amount shall be billed.
- 8.3 Bacher Systems shall issue the bill for one-time services immediately after the work has been completed. If the provision of partial services is delayed for reasons for which Bacher Systems is not responsible, services already provided shall be charged after six weeks at the latest.
- 8.4 Services that are not covered by the agreed fee shall be charged collectively on a monthly basis after the work has been completed.

## **9 Customer content**

- 9.1 If the customer sends content to a service provided by Bacher Systems, he accepts the unrestricted access and use of this content by Bacher Systems, exclusively for the purpose of providing and operating the respective service. In addition, the customer agrees that Bacher Systems may also make this content available to other data processors (SaaS-manufacturer) for the purpose of providing and operating the respective service. The Customer shall always retain all rights and interests in its own content. Access and use of customer content shall be exclusively in accordance with the manufacturer's contractual terms and conditions.

## **10 Miscellaneous**

- 10.1 If any part of these terms and conditions should be ineffective, this shall not affect the validity of the remaining terms and conditions. The ineffective condition shall be replaced by an effective condition that comes as close as possible to the economic intentions of both parties as can be recognised from the Agreement. Unless otherwise agreed, the statutory provisions applicable to registered traders shall apply.
- 10.2 Amendments to these terms and conditions as well as additions thereto are only valid if they are agreed in writing and signed by the company.

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