neo42

As at: 02/2023

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General Terms and Conditions of neo42 GmbH for the

neo42 Management Service

Preamble:

The General Terms and Conditions set out below apply to all contracts concerning the neo42 Management Service concluded with neo42 GmbH, Wilhelm-Grümer-Weg 22, 51674 Wiehl (hereinafter abbreviated to "neo42"). They shall apply insofar as the Customer is a merchant within the meaning of the German Commercial Code (HGB), including all future business relationships even if they are not expressly agreed again. The nature and scope of the respective services owed shall be agreed in separate contracts.

Deviations from these General Terms and Conditions shall only be effective if confirmed by neo42 in writing.

Employees of neo42 are not authorised to enter into verbal ancillary agreements or to give verbal assurances that go beyond the content of the respective contract, including these General Terms and Conditions.

Any changes to these General Terms and Conditions shall be communicated to the Customer in writing, by fax or by email. If the Customer does not object to such changes within four weeks of receiving notification thereof, they shall be deemed accepted. The Customer's attention is specifically drawn to its right of objection and the legal consequences of inaction whenever changes are made to these General Terms and Conditions.

1 Subject Matter of the Contract

1.1 neo42 shall grant the Customer access to the neo42 Management Service available via the neo42 Service Portal. The neo42 Management Service enables the customer to receive particular information about its Window-based computers via plug-ins provided by neo42 (functional enhancements on the basis of the neo42 management infrastructure) and also to execute various administrative actions on these computers. The Customer is aware of the selection and content of the plug-ins provided by neo42. neo42 adds to the functionality and number of plug-ins offered on a continuous basis, without any legal entitlement thereto on the part of the Customer.

1.2 neo42 does not provide any guarantees regarding the full functionality of individual plug-ins in every customer environment. The Customer alone shall be responsible for checking whether and to what extent it may use the plug-ins provided by neo42 as part of the Management Service.

1.3 This contract also concerns the continuous development of existing and, from neo42's perspective, useful plug-ins, which are provided to the Customer via the neo42 Service Portal.

1.4 The Customer's purchase orders constitute a binding offer to neo42 for conclusion of a contract. A contract shall only come into effect if neo42 accepts the Customer's binding purchase order by granting access to the Customer or if neo42 confirms acceptance to the Customer in text form or by a separate communication.

2 Term of Contract and Periods of Notice

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2.1   The contractual relationship shall commence upon handover of the access code for the neo42 Service Portal for the service "neo42 Management Service" to the Customer. When concluding the contract, the Customer can choose between a one-off temporary access to the latest installation files and an automatically renewable contractual term.

2.2   When concluding the contract, the Customer makes a binding decision to choose one of the following contract variants:

a)   The contractual relationship is limited to a term of 12 months following handover of the access details. The contractual relationship is not automatically renewed.

b)   The contractual relationship is limited to a term of 12 months following handover of the access details. However, the contract automatically renews for a further 12 months, unless it is terminated by one of the Parties in writing with four weeks' notice given prior to expiry of the contractual term.

Any subsequent changes in the choice of contract variant shall only be possible with the express consent of both Parties or under observation of the contractually agreed periods of notice applicable to the chosen contract variant.

2.3   The right to effect termination without notice shall remain unaffected. Terminations must always be submitted in written form.

3   Rights of Use

3.1   By concluding the contract, the Customer is granted a simple, non-transferable right to access the neo42 Service Portal, limited to the term of the respective contract variant and exclusively for its own business purposes. neo42 shall grant the Customer a simple, non-exclusive right, unrestricted in terms of time and location, to use the plug-ins of the neo42 Management Service utilised by the Customer for its own business purposes. The right to use the respective plug-in of the neo42 Management Service must be licensed per client management infrastructure.

3.2   The Customer may only reproduce the installation files of the neo42 Management Service if such action is deemed essential for the use of the software. Necessary reproductions include installing the program from the original data carrier to the bulk storage device of the installed hardware, downloading the program to the main memory, executing the software, and creating an appropriate number of backup copies.

3.3   The Customer is not permitted to use simultaneously the plug-ins from the neo42 Management Service for more than the number of client management infrastructures agreed in the contract. If the Customer intends to use the plug-ins from the neo42 Management Service for more than the licensed number of client management infrastructures, it shall communicate the number of additionally required licenses to neo42 in writing before usage begins. neo42 shall invoice separately for the additional licenses in accordance with the price list valid at the time of the subsequent order. Usage based on the number of additionally purchased licenses shall only be permitted once the Customer has paid the amount calculated for the additional licenses.

3.4   The right to access the neo42 Service Portal is limited to the term of the respective contract and shall lapse once the contract has ended for whatever reason, without further legal action.

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4   Copyright Notices

4.1   The Customer acknowledges that the contents of the neo42 Management Service, including all related docu-
         ments, are protected by copyright. Copyright notices and other features used to distinguish the respective
         contents may not be removed or modified by the Customer.

4.2   The Customer shall take appropriate precautions to prevent unauthorised third-party access to the plug-ins
         contained in the neo42 Management Service. The installation files provided to the Customer as well as any
         backup copies of same must be stored in a safe place protected against unauthorised third-party access. It is
         essential that the Customer's employees receive instruction on compliance with these contractual conditions
         as well as the copyright provisions.

5   Further Development & Support

5.1   neo42 shall provide software maintenance in the form of further development and support for the entire term
         of the respective contract. Furthermore, as part of its software maintenance, neo42 shall also eliminate any
         defects. These service obligations shall only cover the number of licenses verifiably purchased by the Cus-
         tomer. The Customer shall not be entitled to demand compliance with specific update or upgrade intervals.
         The latest version of the neo42 Management Service is available for download on the neo42 Service Portal.

5.2   The Customer shall receive the same rights to the software and other contents provided as part of the further
         development or defect elimination under this section as it does to the original version of the neo42 Manage-
         ment Service.

5.2   Support services under this contract are generally provided from Monday to Friday, with the exception of
         public holidays, at the neo42 site between 9 a.m. and 5 p.m., unless different service times have been explic-
         itly agreed between the Parties. In individual cases, the Customer may also request that the services be pro-
         vided outside these times against separate remuneration. Support is provided exclusively via email: Support
         queries must be sent to: neosupport@neo42.de.

5.3   There is no entitlement to the elimination of defects in the plug-ins contained in the neo42 Management Ser-
         vice within a specific time frame. Recognised and reproducible defects are eliminated within an appropriate
         time frame through the delivery of bug fixes, patches, updates or new versions.

5.4   The following is not included in the services:

         -      Services outside the times specified in 5.2;

         -      Elimination of defects caused by the interference of the Customer or third parties or in connection with
                such interference;

         -      Elimination of defects attributable to the use of system requirements other than those approved by
                neo42 or caused by the disregard of installation instructions for system components or for equipment or
                as a result of improper operation for which neo42 is not responsible;

         -      Elimination of defects in software that has been modified following programming work performed by the
                Customer or program parts that do not belong to the original version of the software or whose function
                depends on other programs;
         -      Elimination of defects in software that is not used in accordance with the conditions of use stipulated
                by neo42;

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- Maintenance of software versions that are older than the predecessor of the current version.

5.5 The Customer shall support neo42 in the provision of the maintenance and support services to the best of its ability. The Customer shall provide neo42 with the information required to fulfil the contract, in particular information about the internal network structure of the Customer and the environmental conditions of the software.

6. Prohibition of Transfer/Access Protection

The Customer may not make the right of use, or the software as such, accessible to third parties, nor shall it transfer, sell, rent or lend it to third parties. The Customer may not disclose to third parties the access granted to it or enable third parties to access the neo42 Service Portal with the access details provided to it. The Customer shall further be required to keep confidential the access details provided to it, e.g. username and password, and to safeguard against third-party access. The Customer shall be liable towards neo42 for any unauthorised access using the access details provided to it in cases where the Customer has not taken all reasonable measures within its power to prevent misuse of said access details by third parties, in particular if it does not protect these access details with the same care and attention that it normally would in its own matters and affairs.

7. Claims for Defects and Right of Termination

7.2 During the term of the contract, defects in the software provided by neo42 shall be corrected within an appropriate time frame following notification thereof, where this is technically possible. Any entitlement to defect elimination shall lapse upon expiry of the contract or 12 months after the last software version has been provided, whichever is later.

7.3 The Customer may not enforce a reduction by deducting an amount from the agreed remuneration. Corresponding claims for enrichment or damages shall remain unaffected.

7.4 The Customer's right of termination on the grounds of failure to grant use in accordance with Section 543 (2) (1) (1) of the German Civil Code (BGB) is excluded, unless a rectification or replacement delivery is deemed to have failed.

8 Liability

8.1 No-fault liability on the part of neo42 for defects that existed before the contract was concluded, in accordance with Section 536 a (1) BGB, are expressly excluded.

8.2 The following provisions shall otherwise apply: neo42 shall have unlimited liability, in accordance with the statutory provisions, for damage to life, body and health due to a negligent or intentional breach of duty by neo42, its legal representatives and vicarious agents, and for loss or damage covered by liability under the Product Liability Act. neo42 shall be liable, in accordance with the statutory provisions, for loss or damage not covered by sentence 1 and which is due to intentional or grossly negligent breaches of contract as well as dishonesty by neo42, its legal representatives or vicarious agents.

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8.3   neo42 shall also be liable for loss or damage caused by ordinary negligence insofar as the loss or damage arising in this way is due to a breach of rights to be granted to the Customer in accordance with the content and purpose of the relevant contract and/or insofar as the loss or damage arising in this way is due to a breach of duty, the fulfilment of which is essential for the proper performance of the contract and on whose compliance the contractual partner regularly relies and may rely (cardinal duties).

8.4   Any further liability shall be excluded irrespective of the legal nature of the claim asserted.

9   Obligation to Return and Delete

9.1   When the respective contractual relationship has ended, the Customer shall return to the neo42 Service Portal the access details provided to it as well as any other documents. Access to the neo42 Service Portal shall lapse upon expiry of the contract. After the contract has expired, the Customer may continue to use the plug-ins from the neo42 Management Service already installed by it prior to expiry of the contract. However, the Customer shall not be entitled to receive program updates or support after the contract has expired.

10   Calculation and Payment

10.1   The agreed payment for use of the neo42 Management Service plus VAT must be made to neo42 in advance per calendar year. If the Customer defaults on payment, neo42 shall be entitled to charge statutory default interest and prevent the Customer from accessing the neo42 services following prior written warning. In such cases, the Customer shall still be required to pay for any usage fees.

10.2.   This shall not affect neo42's right to assert further claims for compensation.

11   Place of Performance and Jurisdiction

11.1   The law of the Federal Republic of Germany shall apply exclusively. The application of the UN Convention on the International Sale of Goods is expressly excluded.

11.2   The place of performance is the headquarters of neo42.

11.3   Where legally compatible, jurisdiction for all legal disputes between the Parties shall be the headquarters of neo42.

11.4   The assignment of rights and obligations by the Customer to a third party shall require the written consent of neo42.

12   Final Provisions; Severability Clause

12.1   neo42 logs the IP addresses of the computers/devices from which access to neo42 services takes place in order to detect any potential misuse. The latest version of neo42's privacy policy shall apply to the personal data collected and stored in such cases.

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12.2   These General Terms and Conditions, together with the orders agreed between the Parties, make up the entire contractual agreement. In the event of any conflicts between these General Terms and Conditions and the provisions of an order, the provisions of the respective order shall prevail.

12.3   General Terms and Conditions of the Customer, which contradict these provisions, shall not apply. Their validity is expressly excluded by the Contracting Parties.

12.4   If individual or multiple provisions contained in these General Terms and Conditions are or prove to be ineffective or void, or if a loophole is found in these General Terms and Conditions, this shall not affect the effectiveness or validity of the remaining provisions. In such cases, the Contracting Parties shall replace the ineffective or void provisions with legally effective provisions that come closest to the purpose intended in the ineffective or void provisions.