

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;



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3. failure or functional limitations of any non-HPE software or product impacting systems receiving HPE support or service;
 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.



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- 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.



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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 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.

Supplementary Terms and Conditions and Description of Services – Annex ZB-LB-G Version 2016 – Revised 08/2016

Hewlett Packard Enterprise (HPE) provides product support services in accordance with these Supplementary Terms and Conditions and Description of Services, with the current, valid version of the Service datasheets and with the HPE Customer Terms - Support.

1. HPE SERVICE

The HPE Service may consist of the following services:

HPE Foundation Care Portfolio

HPE Proactive Care Portfolio

HPE Datacenter Care Portfolio

The services agreed in each case are listed in the system note. Further information about the items that form part of our services can be found in the individual datasheets. The datasheets can be found on our website at the following address: www.hpe.com/de

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2. SUPPLEMENTARY TERMS AND CONDITIONS

- 2.1 Unless otherwise agreed, the Service Contract will have a term of 12 months. It will be automatically renewed each time for a further 12 months unless the contract is terminated by either party 1 month before the current term expires.
- 2.2 If HPE intends to amend the Service Contract at the time it is renewed, HPE will give written notice to the customer in good time to advise it accordingly. In such cases, the customer will be entitled to terminate the Service Contract within one month of receiving the notification amending the Service Contract. If notice of termination is not given, the Service Contract will be renewed under the amended conditions for 1 year.
- 2.3 Where multi-year contracts are extended, multi-year discounts will only apply to the extension period if the contract is renewed for two or more years.
- 2.4 HPE may cease to provide support for products and certain support services which are no longer part of the support package offered by HPE after providing written notice of 60 days, unless anything different is arranged in writing. In this case, the support fees paid in advance for a certain support period will be reimbursed pro rata, deducting any compensation payment which may have been agreed in writing.
- 2.5 If the supported products (hardware or software) are non-HPE products, the following restrictions will apply:
 1. HPE is entitled to cancel third-party products from a service contract with notice of 3 months if HPE verifies that the support agreement with the manufacturer or the support partner for the product in question has ended or is due to end within the next 3 months.
 2. Patches or update licenses may not be provided for some third-party software products.

3. SCOPE OF Mature support

- 3.1 HPE Mature Hardware Onsite Support Service (HE808AC) is offered for selected products that HPE has removed from the maintenance cycle worldwide. The precondition is that the products must previously have been covered by HPE Hardware Support. It is possible that HPE may not be able to resolve all problems fully or restore the product to an unlimited operational state within the HPE Mature Hardware Onsite Support Service. HPE reserves the right to cancel this support without notice at any time if it no longer seems sensible to continue to provide it.

4. SCOPE OF SOFTWARE SUPPORT SERVICES

4.1 TELEPHONE SUPPORT BY THE HPE SOLUTION CENTER

- 4.1.1 Telephone Support
Telephone Support includes all software versions that are still supported by the original producer. HPE will provide telephone advice to the customer's qualified contact person on queries relating functionality and possible use of the software covered by the customer service agreement and will support him/her in identifying, dealing with or resolving problems which arise. Troubleshooting may be accelerated with the customer's permission through the use of remote diagnostics, provided the technical requirements for this are in

place. The customer will give HPE an accurate description of the symptoms of the malfunction which has been discovered.

Service windows: depending on the type of contract, it may be on working days, Monday to Friday, 8 AM to 5 PM, or up to 24 hours, 7 days a week. The service window which is agreed in each case is specified in the system note.

The standard response time is 2 hours. Response times may vary for certain products. Further details can be obtained from the versions of "Foundation Care", "Software Support 9x5 and 24x7", "Proactive Care", "Proactive 24", "Proactive Select", "Datacenter Care", "Critical Service" and "Mission Critical Partnership" that apply at the time the current order is issued.

4.1.2 Multi-system support

This support must be contractually concluded for every product for which telephone software support is to apply. This also applies to HPE application software and certain third-party software; in this case, support must also be contractually concluded for every product on which the supported software is used.

4.1.3 HPE Prior Software Version Support Services

(HJ903AC and HJ904AC) These services provide technical remote support for selected older products and older versions of HPE software. Furthermore, they may be available for selected third-party products which are supported by HPE. Earlier versions of software products are versions which are no longer current and which are thus also not covered by the standard software support. Prior version support is based upon software which is generally still being further developed by HPE or by another producer. Software update support services are available for current versions, if required.

4.1.4 HPE Mature Software Support Services

(HJ905AC and HJ906AC). These services provide technical remote support for fully developed (mature) HPE software products. Furthermore, they may be available for selected third-party products which are supported by HPE. Fully developed (mature) software products are current software products which are no longer being further developed for subsequent versions. There is no HPE Software Updates Service available for mature products.

4.1.5 Sustainable Engineering Support

(HJ903AC and HJ905AC only) HPE has established formal escalation procedures for Prior Software Version Support or HPE Mature Software Support services which contain sustainable engineering; this has been done with a view towards resolving complex problems easier. HPE Management coordinates the escalation of problems. To this end, the expertise of HPE developers, as well as that of selected development groups from other production companies, is used in an effort to resolve problems.

5. SCOPE OF NETWORK SUPPORT SERVICES

(HA162AC)

The customer services include remote network troubleshooting and locating the disturbance source within the network environment defined in the customer service agreement. A disturbance will be isolated by HPE until the problematic component, connection route or telephone connection has been identified, and until the connection can be tested through to its interface card.



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Within the agreed network environment, HPE will provide support with software and configuration problems for network components, provided HPE is the authorised support provider for these products. Locating connection problems will be limited to identifying the connection route between the components.

The services for software products will be extended to include telephone support for software and configuration problems affecting network-related parameters. This affects the systems which are used within the network environment defined in this customer service agreement.

Problem management is part of a network support contract. With authorisation from the customer, HPE will coordinate all on-site and remote maintenance activities with the customer's service providers, up to the point at which problems are resolved. However, HPE will not assume any legal responsibility for the services provided by third parties.

The network support tool used by HPE will be operated via a customer's own line. HPE will retain ownership, as well as all rights.

6. REQUIREMENTS

6.1 GENERAL REQUIREMENTS

- 6.1.1 If the customer allows the support for hardware products to expire, HPE will invoice the customer additional costs in order to resume support, or will request the customer to carry out certain hardware or software upgrades.
- 6.1.2 HPE may ask the customer to use certain hardware and/or software systems and network diagnostics and maintenance programs (proprietary service tools), as well as certain diagnostic tools which may be integrated into the customer's system as part of that system. Proprietary service tools are and will remain the sole and exclusive property of HPE and will be provided "as seen". Proprietary service tools may be located on the customer's systems or at the customer's facilities. The customer may only use these tools during the term of a valid support contract and only to the extent permitted by HPE. The customer may not sell, transfer, assign, cede or pledge the proprietary service tools, or otherwise encumber them with third-party rights or relinquish them. When the support ends, the customer will return the proprietary service tools or permit HPE to remove them. Customer will also be required to:
 - allow HPE to keep the Proprietary Service Tools resident on his systems or sites, and assist HPE in running them;
 - install Proprietary Service Tools, including installation of any required updates and patches;
 - use the electronic data transfer capability to inform HPE of events identified by the software;
 - purchase HPE-specified remote connection hardware for systems with remote diagnosis service if required; and
 - provide remote connectivity through an approved communications line
 - Customer may not modify, reverse engineer, disassemble, decrypt, decompile or make derivative works of the Proprietary Service Tools. If you have a mandatory right to do so under statute, you must inform HPE in writing prior to making such modifications

7. RESTRICTIONS

7.1 GENERAL RESTRICTIONS

- 7.1.1 Multi-Vendor Support: HPE will also provide support services for certain other third-party products. The services will be provided in line with the existing warranty regulations for

this non-HPE product. HPE may cease to provide support services for these products if the manufacturer or licensor ceases to provide support services to HPE.

- 7.1.2 For products or systems not covered by maintenance for more than 30 days or that are no longer covered under a guarantee, HPE may invoice the customer on a retrospective basis for the support that no longer takes place, if the customer wishes to conclude a Support Contract.
- 7.1.3 In the case of support of non-HPE systems, the customer has no entitlement to the supply of firmware updates from HPE.
- 7.1.4 Relocation and impact on support: Relocation of any products under support is customer's responsibility and is subject to local availability and fee changes. Reasonable advance notice to HPE may be required to begin support after relocation. For products, any relocation is also subject to the license terms for such products.
- 7.1.5 Services which are not included; the scope of performance does not include:
- Program development
 - Encoding
 - Identification of encoding problems
 - Consulting
 - Integration / initial training
 - Irrespective of the cause of any data loss, the recovery of lost data is not included in the contractual services
 - Support in the commissioning of new networks and re-/first configurations of products within the network environment
 - Work based on interface problems between HPE products and third-party products which are not covered by any customer service agreement
 - Data backup
 - Rectifying problems caused by force majeure or external influences, such as:
 - Incidents of war of any kind
 - Unrest
 - Nuclear energy
 - Wilful intent on the part of the customer
 - Negligence
 - Operator error
 - Wilful intent or vandalism
 - Other external influences
 - Customer service work which is necessitated by the fact that devices are operated under conditions (for example, dirt, deviation from the recommended room temperature or relative humidity) or using accessories or consumables (for example, cartridges, printing paper, disposable or rechargeable batteries, etc.) which do not conform to the specifications indicated by HPE or the manufacturer.
 - Replacement of (device-specific) consumables (e.g. ink cartridges, print heads, toner, disposable or rechargeable batteries, etc.). Consumables and wearing parts will be

subject to the standard terms of warranty

8. CUSTOMER RESPONSIBILITIES

8.1 Licenses and Update

Customer may purchase available product support for HPE branded products only if he can provide evidence that he has rightfully acquired an appropriate HPE license for the products, and he may not alter or modify the products unless authorized by HPE at any time. Customer's right to use firmware and software updates ("Updates") provided under HPE Support or warranty or if otherwise made available to customer is co-extensive with his license to the underlying product. However in addition:

- Customer may not use Updates to provide services to third parties
- Customer may not make copies and distribute, resell or sublicense Updates to third parties
- Customer may not copy Updates or make them available on a public or external distributed network
This means that customer may not copy Updates for products that are not under support by HPE
- Customer may not allow access to Updates on an intranet unless it is restricted to authorized users
- Customer cannot make copies of and distribute Updates on devices that are not supported by HPE
- Customer may only make one copy of the Updates for archival purposes or when it is an essential step in authorized use
- Customer may not modify, reverse engineer, disassemble, decrypt, decompile or make derivative works of the Updates. If customer has a mandatory right to do so under statute, he must inform HPE in writing prior to making such modifications
- HPE may terminate customer's license to use the Updates upon written notice if customer fails to comply with these terms
- If customer authorizes a third-party to act as his agent and download Updates on customer's behalf, using his entitlement, customer is strictly and wholly liable for his agents' adherence to the terms of customer's contract with HPE, including these license terms. In addition, all parties must execute HPE's agency agreement to allow for such access by the third party.

8.2 Audit

HPE may audit customer's compliance with these terms (under "Licenses and Updates"). Upon reasonable notice, HPE may conduct an audit during normal business hours with auditor's costs being at HPE's expense. If a software license audit reveals underpayments then customer will pay to HPE such underpayments. If underpayments discovered exceed five percent of the contract price, customer will reimburse HPE for the auditor costs.