

Special terms and conditions of business for support (Support STCs)

Chemnitz, January 03, 2019

1 Scope; subject matter of the contract

1.1 These special terms and conditions of business shall apply to all support services to be provided by c.a.p.e. IT (Support STCs).

1.2 The STCs for support supplement the general terms and conditions of business and the support SLA.

2 Provision of services

2.1 The subject matter of the support contract, as well as the contents and scope of the service obligations, shall be in accordance with the relevant order of the client, the service overview for support, as well as the support SLA.

2.2 The provision of support services can be agreed solely for basic components under Subclause 2.1 of the Support SLA or also for basic components and additional components under Subclause 2.1 of the Support SLA.

2.3 c.a.p.e. IT provides the support services exclusively at its place of business.

2.4 The components for which c.a.p.e. IT provides support services are designated as supported components. These are defined in Subclause 2.1 of the Support SLA.

3 Commencement of the contract

3.1 The contractual term shall commence on the date stated by c.a.p.e. IT in the provisioning notification.

3.2 c.a.p.e. IT shall only be obliged to provide support services once the complete documentation of the operating environment is available to it according to Clause 7.

4 Support for usage and configuration issues

4.1 c.a.p.e. IT shall check all requests of the client in relation to the use and/or configuration of the OTRS, KIX or the additional modules. If the availability of the OTRS, KIX and/or the additional modules concerned would be restricted due to a change request of the client, c.a.p.e. IT shall have the right to reject the said change request.

4.2 Minor changes shall be addressed directly to c.a.p.e. IT via the malfunction-reporting system (web). Change requests will be accepted during the agreed service hours. The client will receive information as to when the change request will be implemented within the agreed response time for "status 0 - functional request". If no notification to the contrary is given by c.a.p.e. IT prior to carrying out the change request, the change will be implemented within the contractual remuneration.

4.3 However, requests for extensive changes that go beyond simple adjustments of the configuration and require more radical and more complex interventions ("major changes") are outside the scope of service of the support agreement. Requests for major changes are to be addressed to the account manager who is responsible for the client or to sales@cape-it.de. These will be happy to provide a corresponding offer. If necessary, requests for major changes can also be addressed to the c.a.p.e. IT service centre.

5 Remuneration and payment terms

5.1 c.a.p.e. IT shall receive the fixed price agreed for flat-rate support contracts under the regulations of the general terms and conditions of business from the client on an annual basis, unless otherwise agreed.

5.2 c.a.p.e. IT shall charge the services for ad-hoc support contracts in accordance with the provisions of Section 4.3 of the general terms and conditions of business, unless otherwise agreed.

5.3 If support services are provided other than at the place of business of c.a.p.e. IT, the client shall, in addition to the agreed remuneration, bear the travel and accommodation costs and expenses of the deployed c.a.p.e. IT employees in accordance with the regulations of the general terms and conditions of business.

5.4 If the client defaults in respect of remuneration for support for more than two months, c.a.p.e. IT shall be entitled to withhold support services until such a time as the client has paid the outstanding remuneration. The payment obligation of the client for the period of time in which c.a.p.e. IT has suspended the support services due to default on the part of the client shall remain unaffected.

6 Conversion of calls

6.1 Unused calls (see the service overview for support) shall be automatically converted into a maintenance contribution for the further development of the KIX standard software.

6.2 This further development will benefit the client in terms of:

- the provision of workarounds, bug fixes, hot fixes and security updates for KIX as updates
- the provision of upgrades and new releases/versions for KIX

- documentation and a manual for KIX

- e-mail notification of the contact person when new product versions of KIX or additional modules are available.

7 Duties of cooperation of the client

In general, the client shall be subject to the following duties of cooperation:

7.1 Prior to the commencement of the provision of services, the client shall provide c.a.p.e. IT with full documentation (detailed description of the system structure, system extensions and applications, for example KIX including additional modules). For this purpose, the client shall be able to use an additional module provided by c.a.p.e. IT free of charge, which is to be installed by the latter in the KIX package management and is to be used for the documentation. This module collects the aforementioned information for the documentation and sends it to c.a.p.e. IT.

7.2 The client shall immediately inform c.a.p.e. IT of any malfunctions that may arise in text form.

7.3 Within reason, the client shall take the necessary measures concerning the detection, delimitation and documentation of malfunctions. If the client receives proposals from c.a.p.e. IT for correcting a malfunction, the client shall be obliged to implement them.

7.4 The client shall install workarounds, hot fixes and updates supplied by c.a.p.e. IT as part of the performance of this contract.

7.5 The client hereby permits the support service to have unhindered remote access to the data-processing unit on which the supported components are installed via ssh, web and terminal servers during the service hours.

7.6 All changes to the system that the client implements without the involvement of c.a.p.e. IT after the handover to c.a.p.e. IT must be immediately reported to c.a.p.e. IT in writing and mutually approved.

8 Term and termination of the contract

8.1 The support contract is concluded for a term of 12, 24 or 36 months (hereinafter "Minimum Contractual Term").

8.2 Following the end of the Minimum Contractual Term, the support agreement shall always be extended by one year, unless terminated by giving three months' notice before the end of the Minimum Contractual Term or before the end of any subsequent contractual period.

8.3 Both parties retain the right to extraordinary termination if the statutory requirements are fulfilled. Section 314 of the German Civil Code (BGB) shall apply.

8.4 In the case of justified extraordinary termination by c.a.p.e. IT, the client shall be obliged, if it is responsible for the grounds for termination, to remunerate c.a.p.e. IT, less any expenses saved by c.a.p.e. IT, until the date on which the contract would have ended in the case of an ordinary termination.

8.5 Declarations of termination must be made in writing. Compliance with the written form is a prerequisite for the effectiveness of the termination. Faxes and emails shall not suffice for the written-form requirement.

9 Proprietary rights

9.1 c.a.p.e. shall only provide a guarantee in respect of legal defects if and to the extent that the service provided by c.a.p.e. IT is itself affected. No guarantee shall be provided if material provided by the client or by a third party engaged by the same has been included in the object of service.

9.2 Liability and guarantee exclusions included in open-source licences such as the AGPL or GPL shall remain unaffected in relation to the legal owners, provided that c.a.p.e. IT is not the legal owner.

The parties shall immediately notify each other if claims are asserted against them due to breach of proprietary rights in relation to the software that forms the subject matter of the contract.

10 Liability for errors in the description of the operating environment

If the client has not described the operating environment correctly, and if this leads to difficulties in the provision of services or even to damages incurred by the client, this shall be at the expense of the client. c.a.p.e. IT shall not be liable in this respect.