

**General Terms and Conditions of Business  
of Matrix42 AG  
for the Provision of Software, Services,  
Maintenance, and Support  
(Last updated: January 2020)**

**I.**

**General Terms and Conditions**

**1. Scope, Protective Clause, and Conclusion of Contract**

- 1.1. These Terms and Conditions shall only apply to companies in accordance with Section 14 of the German Civil Code (*Bürgerliches Gesetzbuch*, or BGB), legal entities under public law, and special funds under public law. These Terms and Conditions shall apply exclusively to all (including future) deliveries and services provided by Matrix42, without Matrix42 having to refer to these in each individual case. Different, contradictory, or additional terms and conditions of the Customer shall only form part of a contract insofar as Matrix42 has expressly agreed to them in writing.
- 1.2. Licenses, services, support, and prices shall be specified in separate agreements ("Specification") (for example, Matrix42 quotation or service description). Quotations provided by Matrix42 shall always be non-binding. Orders, additions, and changes to Customer orders shall not be accepted until they have been confirmed in writing by Matrix42. Performance of a delivery or service, receipt of a delivery note, or an invoice by a Customer shall be considered confirmation.
- 1.3. Any changes or amendments to the respective agreement or these Terms and Conditions must be in writing in order to be effective. Electronic form shall also constitute compliance with the written form agreed in these Terms and Conditions.
- 1.4. The Terms and Conditions for Maintenance and Support and the Product Use Guidelines in its respective valid version, which are available at [www.matrix42.com/en/terms-and-conditions/](http://www.matrix42.com/en/terms-and-conditions/) at any time, shall apply in addition to these General Terms and Conditions.

**2. Remuneration, Payment Terms, and Default of Payment**

- 2.1. The prices indicated in order confirmations and service descriptions or other agreements or the Matrix42 list prices valid on conclusion of a contract shall apply, in each case plus the statutory value-added tax.
- 2.2. Matrix42 receivables shall be due within 14 days of invoicing and payable without deduction in euros. Invoicing shall be paperless and invoices will be sent in digital format via e-mail.
- 2.3. Unless otherwise stipulated in the Specification, the license fee shall be due in full in advance at the beginning of the contract for the basic term of the contract and then at the beginning of each renewal term for each respective renewal term. An increase in the number of usage units ordered (or a change to a higher service package) shall be possible at any time; a reduction (or change to a lower service package) shall be possible only with effect from the end of the basic term or any renewal term, or earlier with the consent of Matrix42. In the event of an increase in the number of usage units ordered during the basic term or any renewal term, the additional fees shall be charged on a pro rata basis. With regard to additional usage units, the prices corresponding to the Matrix42 price list valid at the time of ordering the additional units shall apply.
- 2.4. Should a Customer default on a payment or a substantial portion of a payment for two calendar months, or, in a period extending over more than two months, default on a payment that corresponds to twice a monthly license fee, Matrix42 shall be entitled, after a warning to this effect by e-mail or letter, to terminate the contract extraordinarily with immediate effect and/or block the use of the Software.
- 2.5. The Customer shall only be entitled to set-off if its counterclaim has been legally established or is undisputed. This exclusion of set-off shall not apply to a counterclaim on account of a defect that is based on the same contractual relationship as the Matrix42 claim. The Customer shall only be entitled to exercise a right of retention to the extent that its counterclaim is based on the same contractual relationship.

### **3. Data Backup, Customer Cooperation**

- 3.1. The Customer shall be responsible for ensuring regular and appropriate backup of its data. Matrix42 employees may always assume that all of the Customer's data with which they come into contact are backed up; this shall apply particularly in the context of support.
- 3.2. Matrix42's obligation to perform shall remain in abeyance while a Customer is in substantial arrears with a contractual obligation. Costs that Matrix42 incurs as a result shall be borne by the Customer. If a Customer delays acceptance or

negligently violates any other obligations to cooperate, Matrix42 shall be entitled, without prejudice to other claims, to demand compensation for damages incurred by Matrix42, including any additional expenses.

- 3.3. In order that a Matrix42 cloud service can be provided according to contract, the Customer shall be obliged to fulfill the Matrix42 requirements in terms of Internet connection, hardware, and other system requirements as per the description of services. The Customer must keep credentials needed to access the cloud service confidential and may not give these to its own employees or third parties, unless this is a requirement under the agreed use of the cloud service.

#### **4. Claims by the Customer in the Event of Defects**

- 4.1. Claims by a Customer in the event of defects shall require immediate investigation and notification of the defect without delay following delivery – no later than within two weeks – in the case of an identifiable defect; in the case of hidden defects within two weeks of their discovery.
- 4.2. Complaints should contain as detailed a description of the defect as possible. On request, the Customer shall provide Matrix42 with documents and information required by Matrix42 to assess and rectify the defect, as far as it is possible and reasonable.
- 4.3. The Customer shall give Matrix42 an opportunity to investigate complaints. If a complaint turns out to be unfounded, the Customer shall compensate Matrix42 for the expenses incurred for such investigation unless it is not responsible for the unfounded complaint.
- 4.4. In the case of a defect under the terms of a purchase agreement, Matrix42 shall be obliged, at Matrix42's choice, to remedy the defect or replace (subsequent performance). In the event of failure, unreasonableness, or refusal of subsequent performance, the Customer may reduce the price or, in the case of significant defects, withdraw from the contract and/or request compensation pursuant to Section 5.
- 4.5. In the case of standard software that has been produced by third parties, and this has been indicated in the quotation, the Customer shall assert any potential claims arising from defects in the first instance against the producers of the software in question. Only where such claims against a producer remain unfulfilled due to circumstances that are not the responsibility of the Customer may the Customer assert a claim arising from defects against Matrix42.
- 4.6. Claims arising from a defect in the case of software shall only exist if the Customer has installed all the software patches provided by Matrix42 and used the

software in the contractually agreed environment in accordance with the service description.

4.7. The Customer may not assign claims arising from defects.

## **5. Liability**

- 5.1. Matrix42's liability for damages and reimbursement of expenses for slight negligence, in particular due to breach of duties arising from the contractual obligation and due to unauthorized action, shall be excluded, unless Matrix42 has breached an essential contractual obligation, that is, an obligation, the fulfillment of which makes the proper execution of the contract possible (cardinal duty) in the first place, or on compliance with which the Customer may regularly depend. In this case, liability on the part of Matrix42 shall be limited to foreseeable damage that is typical for the contract, and should have been expected by Matrix42 when concluding the contract due to circumstances known to Matrix42. Liability on the part of Matrix42 for damages resulting from injury to body, life, or health, for willful intent and gross negligence, for the failure to provide a guaranteed quality, and under the terms of the Product Liability Act shall, however, be unlimited.
- 5.2. Damage of up to €250,000 per damage event shall be considered as foreseeable and typical for the contract within the meaning of Section 5.1.
- 5.3. Liability on the part of Matrix42 for loss of profit and other pure financial losses shall be excluded, except in cases of willful intent.
- 5.4. In the event of a loss of data, liability on the part of Matrix42 shall be limited to the typical recovery expenses that would be incurred through making regular backup copies in accordance with the risk involved. Moreover, Matrix42 shall only be liable provided the Customer has ensured through appropriate data backup measures that the data can be recovered with reasonable effort.
- 5.5. The aforementioned provisions shall apply accordingly to liability for compensation for wasted expenditures.
- 5.6. Matrix42 shall not be liable to the Customer for damages that are incurred as a result of third party companies commissioned by the Customer not providing their service, providing it late or not providing it properly.

## **6. Limitation in Respect of Defect Claims and Claims for Damages**

Customer claims in the event of defects shall be limited to one year. The limitation period shall also be one year for Customer claims for damages and reimbursement

of expenses that are not based on a product defect. However, these reduced limitation periods shall not apply to claims by a Customer on account of injury to life, health, or body or to claims based on a wilfully or grossly negligent breach of obligation.

## **7. Export and Import Regulations**

The Parties shall comply with the import and export regulations of the countries affected by distribution and use of the Matrix42 Software, in particular the U.S., and shall offer mutual support with procuring documentation such as the necessary end user certificates, etc., free of charge.

## **8. Confidentiality and References**

8.1. The Parties shall treat as confidential information of the other Contracting Party that is clearly of a confidential nature or is designated as confidential by the other Contracting Party, shall not disclose it to third parties, and shall treat it like their own trade and business secrets. This shall not apply to information if and to the extent that it is lawfully commonly known or the other Contracting Party has consented in writing to its disclosure in individual cases.

8.2. Matrix42 may use Customer names and company logos in a list of customers, on the Matrix42 website, for example, as a reference and for advertising purposes, as well as on the Internet and in online services, in particular to reproduce, distribute, process, and make these publicly accessible. The Customer may withdraw its consent with future effect at any time, whereby it shall allow Matrix42 an appropriate period in which to change and use up printed material.

## **9. Applicable Law, Severability Clause, Order of Priority**

9.1. German law shall apply, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG). The place of jurisdiction for all disputes arising from or in connection with the contractual relationship shall be the registered office of Matrix42 or, at Matrix42's choice, the registered office of the Customer if the Customer is a merchant, a legal entity under public law, or a special fund under public law. This shall also apply in cases where a Customer has no general domestic place of jurisdiction, has moved its place of residency or habitual abode abroad after concluding a contract, or neither the Customer's place of residence nor its habitual abode is known at the time when legal action is filed.

- 9.2. In the event that a provision in this Agreement is or becomes invalid, this shall not affect the validity of the remaining provisions.
- 9.3. The following order of priority shall apply to arrangements affecting the contractual relationship:
  - a) Specification
  - b) Annexes
  - c) General Terms and Conditions
  - d) Statutory provisions

## **II. License Terms and Conditions**

In addition to the General Terms and Conditions, the following terms and conditions shall also apply to the provision of Software to the Customer.

### **1. Provision of Software**

- 1.1. These terms and conditions shall apply to both the permanent provision of Software (Software Purchase) and to the limited provision of Software in a Customer network or as "Software-as-a-Service" (SaaS) or other cloud service (Software Lease). The Terms and Conditions for the use for Matrix42 Software that can be viewed at any time at [www.matrix42.de/en/terms-and-conditions/](http://www.matrix42.de/en/terms-and-conditions/) and form part of these General Terms and Conditions shall also apply.

If Ensilo Software (Endpoint Security) is part of the subject of contract, the "Additional Terms and Conditions for Matrix42 Endpoint Security" (Annex A) and for EgoSecure Software, the "Additional Terms and Conditions for EgoSecure Endpoint Security Antivirus from BitDefender" (Annex B) shall also apply.

- 1.2. The agreed quality of the Software, including the system environment approved by Matrix42, can be found in the user documentation and, in the case of Software-as-a-Service, in the respective applicable description of services.
- 1.3. The Customer shall only receive Software in object code and generally through a downloading option, but, at the Customer's request, also on a data carrier in return for payment. The Customer shall receive user documentation with the Software (for example, in the form of online help). If a cloud service has been agreed, the Customer shall only have access to the Software and online help in the context of the agreed availability in a Matrix42 or subcontractor data center.
- 1.4. The Customer shall have researched the key functions of the Software and therefore bear the risk that the Software meets its requirements.

- 1.5. Matrix42 may take appropriate technical measures to protect against a non-conforming use of the Software (for example, with license keys, copy protection, or hardware/software dongles). The use of the Software on an alternate or subsequent Customer configuration shall not be adversely affected by this; however, in the event of problems, Matrix42 shall support the Customer free of charge.

## **2. Right of Use**

- 2.1. If a Software Purchase has been agreed with the Customer, the following shall apply:

Following payment in full of the license fee, the Customer shall receive a non-exclusive right of use, unlimited in terms of time, in respect of the Software and the user documentation, in accordance with the user documentation and the following provisions:

The Customer shall not be permitted to lend, hire out or transfer the Software in any other manner to a third party for profit-making purposes, sublicense the Software or communicate it, or make it available to the public; this shall also include provision for use in the context of an outsourcing or comparable concept. The Software may only be sold on to a third party in the form of use in which it was purchased. The Customer shall bind the purchaser in writing to comply with the provisions in 2.1, 2.3–2.7 in respect of Matrix42, and shall notify Matrix42 of the purchaser's name and address.

- 2.2. If a Software Lease has been agreed with a Customer, the following shall apply:

The Customer shall receive a non-exclusive right of use, unlimited in terms of time, in respect of the Software and the user documentation, in accordance with the user documentation and the following provisions:

The Customer shall not be permitted to sell, lend, hire out or transfer the Software in any other manner to a third party for profit-making purposes, sublicense the Software or communicate it, or make it available to the public; this shall also include provision for use in the context of an outsourcing or comparable concept.

- 2.3. Reproductions and workarounds, in particular manipulations, of the Software as well as decompilation shall be prohibited; however, the mandatory provisions in Sections 69 (d) and (e) of the German Copyright Act (*Urheberrechtsgesetz*,

or UrhG) shall remain unaffected. If hardware is changed, the Software must be deleted completely from the hardware that has been used to date.

- 2.4. Copyright notices, serial numbers, and other Matrix42 or third-party features serving to identify the Software or the copyright holder may not be made illegible, changed, or removed by the Customer.
- 2.5. The Customer shall be responsible for compliance with the above provisions by its employees. If unauthorized use of the Software by employees or a third party is suspected, the Customer shall inform Matrix42 without delay and help clear the matter up to the best of its ability. In particular, the Customer shall inform Matrix42 without delay if the number of users changes.
- 2.6. If a Customer is in culpable breach of any one of the provisions in 2.1 or 2.2, Matrix42 shall be entitled to impose a contractual penalty up to three times the license fee paid by the Customer or, in the case of a Software Lease, up to three times an annual license fee, that, at the Customer's request, is to be assessed for its adequacy by the District Court in Frankfurt am Main, Germany. The assertion of other claims, in particular for failure to act or for compensation, shall remain unaffected. Contractual penalties shall be taken into account in claims for damages.
- 2.7. The Customer shall be obliged to notify Matrix42 without delay of use of the Software on more than the agreed devices or other over-utilization that is contrary to the terms of the license. At Matrix42's request, which shall generally be made once per calendar year, the Customer shall measure the Software used by them using an application provided by Matrix42 and send Matrix42 the result. A check shall be made in the process of whether there is any over-utilization. If Matrix42 has good reason to suspect over-utilization, it may request that use is measured at any time. In the event of over-utilization, the Customer shall be obliged to pay compensation of 150% of the fee for the additional use in accordance with the current Matrix42 price list at the time when the over-utilization comes to light. Other and additional claims by Matrix42 shall remain unaffected.
- 2.8. If Software-as-a-Service has been agreed with a Customer, the following shall apply:

Matrix42 shall provide the Customer with the software product ("Software") designated and described in the Specification for use via the Internet ("Service"). The Software runs on computers in a data center used by Matrix42; the Customer shall receive for the term of this contract indicated in the order the non-exclusive and non-transferable right to access the Software via a browser and an Internet connection and to use it for its own business purposes solely in the



pursuit of its commercial or independent professional activities. The Customer shall be responsible for the Internet connection between the Customer and the data center and all the hardware and software required (computer, network connection, browser, etc.). This right of use shall be limited to the number of usage units ordered by the Customer (for example, number of users or managed devices). These usage units shall be described in the Specification. A transfer of use or provision of services to third parties shall be prohibited. Matrix42 does not provide its services for consumers, but rather solely for the purposes of the commercial or independent professional activities of the Customer.

In the case of SaaS contracts, Matrix42 shall perform any updates and upgrades to the Software used at its own discretion. The Customer shall not be entitled to the latest Software version.

### **3. Elimination of Defects in the Case of Software Lease and SaaS**

- 3.1. The Customer must notify Matrix42 without delay of any defects and explain in detail the circumstances surrounding their occurrence. Matrix42 shall rectify defects within a reasonable period. Matrix42 shall be entitled to circumvent a defect by means of a workaround solution, if the cause of the defect itself can be rectified only with disproportionate effort and the usability of the service is not significantly impaired. Matrix42 may also rectify a defect by providing a new Software version.
- 3.2. In the case of leased Software, strict liability on the part of Matrix42 for defects existing upon conclusion of a contract (Section 536 (a) of the German Civil Code) shall be excluded.
- 3.3. The Customer shall only be entitled to terminate on account of failure to permit use (Section 543 (2) (1) of the German Civil Code) if subsequent rectification or replacement delivery has failed.

### **4. Term of Contract and Termination in the case of Software Lease and SaaS**

- 4.1. Contracts shall be concluded for a specific term as defined in the Specification (for example, 12 months) ("Basic Term") and shall then renew automatically for the same period ("Renewal Term"), unless a contract is terminated by either party with a notice period of three months ("Notice Period") to the end of the Basic Term or a Renewal Term. The right to termination for good cause shall remain unaffected. Section 2.3 of the General Terms and Conditions shall apply to a reduction in the number of usage units. If no Basic and/or Renewal Term is specified in the Specification, this shall be 12 months respectively.

- 4.2. The right to termination for good cause shall remain unaffected. Matrix42 shall have good cause, for example, if a Customer violates the Terms and Conditions of Use.
- 4.3. Any notice of termination must be given in writing to be effective.
- 4.4. The Customer may export data it stores in the data center via the cloud service via an export function during the contractual term of a cloud service. The Customer shall no longer have access to these data after the end of the contractual term. Matrix42 shall keep these data for 30 days after the end of the contract and shall provide the Customer with a copy of the data in an industry standard format to be selected by Matrix42 on request during this period against separate payment; Matrix42 shall delete the data after the cited period – or earlier at the Customer’s request.

## **5. Price Changes for Software Lease and SaaS**

Matrix42 shall be entitled to increase or reduce the prices agreed with the Customer upon expiry of at least 12 months from the effective date of the last price change (but no earlier than 24 months after the conclusion of a contract) with effect from the beginning of the following Renewal Term. Such a price increase may not amount to more than 5% per year of contract, unless the labor costs of Matrix42 for the provision of the service have risen by more than 5% per year of contract. The revised prices shall take effect if (i) Matrix42 notifies them to the Customer in advance in writing or by e-mail at least six weeks prior to them taking effect, and (ii) the Customer does not object to them in writing or by e-mail within six weeks of notification. When notifying a price change, Matrix42 shall make reference to this legal consequence again separately. If the Customer objects, the existing prices shall continue to apply. Matrix42 shall have the right to ordinary termination of the contract in accordance with Section 4.1.

### **III.**

## **Service Terms and Conditions**

In addition to the General Terms and Conditions, the following terms and conditions shall apply to Services (in particular installation, support, advice, and training):

### **1. Cooperation**

The Customer shall provide Matrix42 with all necessary information and shall create the conditions in its operating environment that are required in order to provide the services, in particular access to the necessary IT systems.

## **2. Rights of Use in Respect of Work Results**

Upon payment of the corresponding invoice, Matrix42 shall grant the Customer a non-exclusive, non-transferable, spatially and temporally right to internal use Work Results within the scope of the contractually agreed purpose.

## **3. Service Description**

3.1. Work, terms and conditions, and prices of services to be provided by Matrix42 shall be agreed in a service description. Without a service description, Matrix42 shall not be obliged to provide services.

3.2. Quotations and deadlines shall only be binding if they have been expressly agreed in the respective service description. Service descriptions and statements of costs are based on estimates and are produced on the basis of information made available by the Customer; Matrix42 will update such estimates at the Customer's request.

## **4. Surcharges for Night Work and Work on Sundays and Public Holidays**

The agreed hourly and/or daily rates shall increase by 50% if a service is to be performed at the Customer's request on a Saturday or during the period between 6 pm and 8 am; they shall increase by 100% if a service is performed at the Customer's request on a Sunday or public holiday (the German state of Hesse).

## **5. Time Sheets and Travel Expenses**

5.1. The Customer shall confirm the hours/days spent by employees deployed at the Customer's business premises at the end of a day and/or a week with its signature in writing. Such written confirmation shall form the basis for our invoices to the Customer.

5.2. Travel time shall be charged at the agreed hourly or daily rates.

5.3. Travel costs and expenses shall be reimbursed to us by the Customer, in addition to the agreed remuneration against proof of these.

## **IV.**

## Maintenance and Support

In addition to the General Terms and Conditions, the following terms and conditions shall apply to support:

### 1. Support

- 1.1. Matrix42 shall provide support in accordance with a Support Service Description. Support Service Descriptions shall also include details of the conditions under which support will be provided, in particular cooperation on the part of the Customer. Matrix42 may modify support in accordance with technical advancement and development of the Software taking the legitimate interests of the Customer into account. Matrix42 shall give three months' notice of modifications unless only minor modifications are involved. In the event of a modification that is disadvantageous to the legitimate interests of a Customer, the Customer may terminate support prematurely within one month of receiving notification of the date on which the modification will be introduced.
- 1.2. It is imperative for Matrix42 support that the Customer or its employees have received training in the use of the Matrix42 Software.
- 1.3. In all requests for support, the Customer must describe the problem in as much detail as possible, and so that it can be reproduced. Resources provided by Matrix42 for this purpose, for example, checklists or a ticket system, must be used. Problems should only be reported by qualified personnel appointed by the Customer.
- 1.4. In addition the Terms and Conditions for Maintenance and Support available at <https://www.matrix42.com/tcsupport/> shall apply.

### 2. Fees

- 2.1. Unless otherwise agreed, fees shall be determined in accordance with the Matrix42 list prices plus statutory VAT and shall be payable per year of contract in advance by the tenth working day of the respective year of contract. A calculation shall be made for support commencing upon delivery of the Software.
- 2.2. Matrix42 may increase support fees by a maximum of 5% once in each year of contract giving six weeks' notice in writing to the Customer, in accordance with cost increases for Matrix42 that cannot be balanced out by cost reductions. If a Customer does not object to an increase within one month of receiving notification of the increase, the new fee shall be deemed accepted. If a Customer

objects to an increase, the fee shall remain unchanged; however, Matrix42 shall be entitled to terminate the contract within one month of receiving an objection giving three months' notice. Matrix42 shall make explicit reference to these legal consequences in the notice of increase.

### **3. Term of Contract and Termination**

Support shall commence on the agreed date. It shall run for one year and shall be extended by a further year unless it is terminated by one of the Parties at the end of the respective contract giving three months' notice. The right to extraordinary termination for good cause shall remain unaffected. All terminations shall be required in writing, which includes by fax, but not by e-mail.

### **4. Update and Upgrade Service**

- 4.1 If and to the extent that Matrix42 brings to market any updates or upgrades for the standard version of the Software during the term of a contract, Matrix42 shall make these updates/upgrades available to the Customer as a download. For these updates and/or upgrades, Matrix42 shall grant the Customer the same rights of use and material defects rights as were granted to the Customer for the original version of the Software under its software purchase or lease agreement. The Terms and Conditions for the use of Matrix42 Software can be viewed at <http://www.matrix42.de/en/terms-and-conditions/>.

The limitation period for material defects shall begin on the date on which the Customer was able to use the update or upgrade (for example, upon receiving a message that the update/upgrade is available for download).

With respect to the rights of use, the rights to the updates/upgrades shall, after a reasonable transition period – usually not more than one year – replace the rights to the previous versions. The Customer may archive a copy of the old version of the software.

- 4.2 Key features of the updates/upgrades. The updates/upgrades may serve for the debugging of the Software and/or modify and/or expand and/or improve the Software functions or include new features.

The scope of the features in the updates/upgrades is shown in detail in the respective information provided about the Software.

**5. Use of Latest Software Versions**

The Customer shall use the latest Software version provided to it, including updates and upgrades, unless such use represents an unreasonable burden to the Customer. An enhanced maintenance package and/or fee-based support can be requested from Matrix42.

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