

General Terms & Conditions for Checkmk Enterprise Standard Edition and Checkmk Enterprise Managed Services Edition

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1 Scope of Application

- 1.1 These General Terms & Conditions (“**GTC**”) for Subscriptions govern the provision of the Checkmk Enterprise Standard Edition and the Checkmk Enterprise Managed Services Edition (referred to hereinafter as “**Checkmk Enterprise Edition**” or “**Checkmk**”) by Checkmk GmbH under a subscription agreement with Checkmk GmbH (“**Agreement**”).
- 1.2 The services of Checkmk GmbH are offered exclusively to entrepreneurs in the legal sense, i.e. natural or legal persons under private and public law or partnerships with legal capacity, who act in exercise of their trade, business or profession. The Customer’s status as an entrepreneur must be proven upon formation of the contract, e.g. by providing the VAT identification number or other suitable proof. The information required for that purpose must be provided completely and truthfully.

2 Subscription for Checkmk Enterprise Edition

- 2.1 With the purchase of a Checkmk subscription, the Customer obtains a perpetual license to use the software in accordance with the End-User License Agreement (“**EULA**”) in effect at the time of the download as well as the right to download the software during the term of the subscription from a download server operated by Checkmk GmbH.
- 2.2 The software will be made available exclusively as a download. Upon conclusion of the Agreement, Checkmk GmbH will provide the Customer with individual login data for the download area. The Customer will be responsible for the installation and configuration of the software. It may be necessary to activate the software (possibly per instance) by entering licensing credentials.
- 2.3 For the purpose of providing the login data and for contractual communication, the Customer shall designate a so-called Super User. During the term of the subscription, the Customer shall keep the contact details of the Super User up to date and inform Checkmk GmbH immediately of any changes.
- 2.4 As part of the subscription, updates will be made available from time to time that may include both functionality enhancements and bug and security fixes.
- 2.5 Changes in monitored systems may affect the functionality of the software. Among other things, the software makes available over 2,000 check plug-ins that can be used to monitor data points from different devices and applications. Vendors of such devices and applications regularly update their software and interfaces. Checkmk and the most important plug-ins will be adapted as part of the subscription to accommodate such updates pursuant to the Checkmk product roadmap. Checkmk GmbH will not, however, be under any obligation to make such adaptations. Customers may have adaptations made by Checkmk GmbH or its partners for a fee. In the case of Checkmk GmbH, this requires the conclusion of a Support Agreement.

- 2.6 The Customer may not assign, transfer, donate, lend, rent or lease the rights deriving from the subscription. Resale is only permitted on the basis of a separate agreement with Checkmk GmbH.
- 2.7 Login data for the download area may under no circumstances be disclosed outside the legal entity identified as the Customer in the Agreement. In the event that the Customer has acquired the 'Group and Managed Services Use' license option, the Customer may share login data in accordance with the license option. Checkmk GmbH must be notified immediately in writing in the event that login data are inadvertently compromised. The login data will then be deactivated and new login data issued by Checkmk GmbH.

3 Term and Termination

- 3.1 The subscription will commence as of the commencement date specified in the Agreement and has an initial term of twelve (12) months, unless agreed otherwise.
- 3.2 If it is not terminated by one of the parties at least three (3) months prior to the end of its term, the Agreement will automatically renew each year for another year. The Customer's termination rights under sections 4.9 and 9 shall remain unaffected. The right of each party to terminate for good cause also remains unaffected.
- 3.3 Notification of termination must be made in text form (e.g., by postal mail, e-mail or fax).
- 3.4 The Customer will no longer be authorized to download the software after the subscription has expired. The rights of use granted under the EULA will not be affected by the termination of the subscription. The most recent sizing, i.e., the number of monitored services most recently agreed, will apply for the purposes of exercising such rights. Licensing credentials remain valid after termination of the subscription.
- 3.5 To prevent abuse, Checkmk GmbH reserves the right to make the reinstatement of a subscription after termination subject to retroactive payment. This will apply in particular to periods not covered by a subscription within the twelve (12) months preceding reinstatement of the subscription.

4 Payment and Invoicing

- 4.1 The annual subscription price is shown in the Agreement and is based upon the edition and the chosen add-ons and license options as well as upon the number of services monitored.
- 4.2 A service consists of a monitored data point, for example, the CPU load of a specific device. A device may, therefore, comprise many services. Services that are monitored only by Checkmk instances that are used exclusively to test Checkmk will not be counted for such purposes. If a specific service is monitored from several Checkmk instances simultaneously (e.g., for redundancy or testing purposes), that service will be counted only once.
- 4.3 The number of services monitored is tiered in the pricing model. The Customer must select the price tier that covers the number of services monitored under the subscription

(including services of Affiliates and Managed Services Clients, as defined in the EULA) so that the number of services monitored will not exceed that covered by the license. Checkmk GmbH may technically prevent the use of the software beyond the licensed sizing. The activation of technical restrictions will occur no earlier than three (3) months after the software has first indicated underlicensing.

- 4.4 The prices for the 'Checkmk Enterprise Standard Edition' (CEE) apply only for use by one legal entity. Such an entity may be a natural or legal person, a public body or an authority. The prices for the 'Group and Managed Services Use' license option and for the 'Checkmk Enterprise Managed Services Edition' (CME) include the right to use the software by up to seven (7) Affiliates as well as the use of the software in the context of Managed Services (both as defined in the EULA).
- 4.5 Checkmk GmbH will invoice the subscription price in advance at the beginning of each contract year. The Customer will upon request provide Checkmk GmbH with information on the number of services monitored and shall perform the license verification that the software provides for this purpose. The Customer will inform Checkmk GmbH if it would like to increase or has exceeded the sizing of the license in the course of a contract year. The Agreement will, in such cases, be revised retroactively with effect as of the beginning of the current contract year and the Customer will be billed accordingly for the difference in the price of the subscription.
- 4.6 All prices are net and are subject to value added tax at the legal rate currently in effect.
- 4.7 Invoices will be due immediately upon receipt and payable within fourteen (14) days.
- 4.8 In the event that the Customer should be in arrears of payment, Checkmk GmbH may block the Customer's access to the download area for as long as the Customer remains in arrears.
- 4.9 Checkmk GmbH reserves the right to adjust the subscription price at the beginning of every renewal period. Checkmk GmbH will notify the Customer of any price adjustment at least twelve (12) weeks in advance. In the event that the Customer is not in agreement with the price adjustment, the Customer may terminate the Agreement with effect as of the end of the term. If the Customer fails to terminate the Agreement, the new price will apply as of the beginning of the respective renewal.

5 Confidentiality and Data Protection

- 5.1 Each party will treat as confidential all information that it receives from the other party in connection with an Agreement, its conclusion and/or its execution unless such information is expressly marked as non-confidential or the information is by its nature non-confidential such as, for example,
 - a. information which the receiving party can demonstrate was already lawfully known to it, other than under an obligation of confidentiality, before the disclosing party first disclosed the information to it;

- b. information which was already in the public domain or readily available at the time of its disclosure or which later enters the public domain or becomes readily available through no breach of the receiving party's duty of confidentiality;
- c. information which one party received in good faith from a third party who had lawfully obtained the information and who was under no duty of confidentiality in relation to the information; or
- d. information which the receiving party independently gained without using confidential information from the disclosing party.

Confidential information includes but is not limited to the Proprietary Software as defined in the EULA, the login data for the download area and licensing credentials, as well as the prices and contractual conditions individually agreed with the Customer. The duty of confidentiality covers information that one party discloses to an Affiliate (as per the definition in the EULA) of the other party.

- 5.2 If any information pursuant to section 5.1 does not meet the statutory requirements for a business secret, it will nonetheless be subject to the confidentiality obligations pursuant to this section 5.
- 5.3 Each party undertakes to treat the other party's confidential information confidentially and to only use it for the purposes of the Agreement. Proprietary Software may only be used pursuant to the provisions of the EULA. Except where the disclosure of confidential information is necessary for the purposes of the performance of the Agreement, it may only be disclosed to a third party with the prior written consent of the party to whom it belongs. The third party must agree in writing to adhere to the confidentiality obligations contained in this section 5 before the confidential information may be disclosed to it.
- 5.4 Each party undertakes to protect the other party's confidential information against unauthorized third-party access by taking appropriate protective measures, applying at least the same degree of care as it would apply to protect its own confidential information.
- 5.5 The parties will also bind their employees to comply with these confidentiality obligations. Each party is only permitted to share the other party's confidential information with its employees or make the same available to them if they need to know such confidential information in order to be able to perform the Agreement. The users of the software must be informed as to the content of the EULA.
- 5.6 The duties of confidentiality will remain in force for the term of the Agreement and for an additional period of five (5) years thereafter.
- 5.7 Checkmk GmbH will process personal data of the Customer and the Customers' employees only to the extent necessary for the performance of the Agreement.

6 Remedies for Defects

- 6.1 A defect in quality exists where the software, to the detriment of the Customer, significantly deviates from its product description on the Checkmk website or where the

software is not suitable for its contractually intended purpose. Minor defects in quality will not be taken into account. The software is unencumbered by any defects in title if no third party is able to assert rights to the software products which interfere with or prevent the Customer from using the software in accordance with the EULA. The warranty for defects in title will only apply to the country of destination where the parties have agreed the software will be used. In the absence of an explicit agreement, the warranty will apply to the country where the Customer is headquartered.

- 6.2 After downloading the software, the Customer must, without delay, examine it thoroughly and, without delay, report any faults, defects or damage to quality@checkmk.com (§ 377 of the Commercial Code (Handelsgesetzbuch – HGB)). Failure to fulfill these duties will result in the loss of the Customer's warranty claims for any defects in the software.
- 6.3 Checkmk GmbH may, at its option, remedy a defect in the software by fixing the defect (repair) or by delivering software free from defects (replacement). For the purpose of defect analysis and correction, the Customer shall enable access to the software by means of telecommunication. The Customer shall establish the necessary connections in accordance with Checkmk GmbH's instructions. For the remedying of defects it may be necessary for the Customer to install a new version of the software or an update or a patch. In such case, the Customer is obliged to accept new versions, updates or patches provided that the full range of features under the Agreement is retained.
- 6.4 Checkmk GmbH will not be liable if the defects do not occur in a newer stable version of the software.
- 6.5 If the defect cannot be remedied within a reasonable period of time or if the repair or replacement fails for any reason whatsoever, the Customer may exercise its statutory rights. The Customer will only be able to demand damages or compensation for frustrated expenses within the limits of section 7. Repair or replacement is only deemed to have failed if Checkmk GmbH has had an adequate grace period to carry out its repairs or replacement and failed to achieve the desired results, if repair or replacement is impossible, if Checkmk GmbH refuses to carry out the repairs or replacement or unreasonably delays in doing so, or there is justifiable doubt as to the chances of success of the repair or replacement or where repair or replacement would, for other reasons, be unreasonable. The particulars of the situation must be taken into account when assessing the adequacy of the grace period for remedying defects, in particular the cause, the severity and the effects of the defects.
- 6.6 If the defect does not affect or only slightly affects the functionality of the software, Checkmk GmbH will be entitled to remedy the defect by delivering a new version or an update in accordance with its release schedule. In such case, the Customer will have no other remedies.
- 6.7 If the software infringes third-party IP rights, Checkmk GmbH may, at its option, provide a cure in one of the following ways:
 - a. by obtaining, from the owner of the IP right, a license in favor of the Customer, which is adequate for the purposes of the existing Agreement;

- b. by modifying the infringing software without affecting its functionality at all or only to an extent that is acceptable for the Customer;
 - c. by replacing the infringing software with non-infringing software without affecting its functionality at all or only to an extent that is acceptable for the Customer; or
 - d. by delivering a new version of the software whose use in conformity with the Agreement does not infringe any third-party IP rights.
- 6.8 If a third party claims that the Customer's use of the software infringes its intellectual property rights, the Customer will notify Checkmk GmbH of this without delay and, to the extent possible, allow Checkmk GmbH to defend the claim. The Customer will provide Checkmk GmbH with all reasonable support in the defense of the claim. In particular, the Customer will provide Checkmk GmbH with all necessary information regarding the use and modification, if any, of the software by it. Such information will be provided, to the extent possible, in writing together with any documents that are available.
- 6.9 If a defect alleged by the Customer is not attributable to Checkmk GmbH or does not in fact exist, Checkmk GmbH will be entitled to charge the Customer for the costs incurred for analysis and remedial work at the respective agreed rates, provided that the Customer was at least negligent in not recognizing that no defect existed.
- 6.10 Checkmk GmbH will not be liable if the use of the software is impaired due to improper installation, operation or maintenance. In particular, Checkmk GmbH excludes any liability for impairments of the use of the software which occur due to the running of the software under conditions that do not correspond to the specifications for the hardware and software environments outlined in the documentation or in other notifications from Checkmk GmbH.
- 6.11 Where the Customer makes modifications to the software or a third party does so on its behalf, Checkmk GmbH will not be liable for any defects unless the Customer can prove that the modifications do not unreasonably impact Checkmk GmbH's ability to analyze and remedy the defects.
- 6.12 Checkmk GmbH excludes any liability for versions of the software that are not marked as stable. Prior versions of the software (e.g. daily builds, innovation versions or beta versions) are provided exclusively for testing and evaluation purposes. The stable versions of software are marked accordingly in the download area.
- 6.13 Warranty claims will become time-barred twelve (12) months from the commencement of the statutory limitation period. This limitation period does not apply in the event of intentional wrongdoing, fraudulent concealment of a defect or the breach of a guarantee as to the software's features.
- 6.14 No warranty claims may be brought after the Customer's subscription has ended.
- 6.15 Any statements regarding the features or fields of use of the software – even if denoted as guarantees – do not constitute guarantees within the meaning of §§ 443, 444 of the German Civil Code (Bürgerliches Gesetzbuch – BGB).

7 Limitation of Liability

- 7.1 Checkmk GmbH will only be liable for damage caused by slight negligence where the damage results from the breach of a material duty that jeopardizes the achievement of the purpose of the Agreement or from a breach of a duty whose fulfillment is of the very essence for the proper execution of the Agreement.
- 7.2 In the cases covered by section 7.1, Checkmk GmbH's liability is limited to the damage which can be reasonably foreseen for such type of contract.
- 7.3 In the cases covered by section 7.1, the amount of Checkmk GmbH's liability is in any event limited as follows:
- a. For each individual occurrence of damage, to a maximum of twenty-five percent (25%) of the net subscription price paid to Checkmk GmbH in the respective contract year; and
 - b. For all occurrences of damage during one contract year, to a maximum of fifty percent (50%) of the net subscription price paid to Checkmk GmbH in the respective contract year.
- 7.4 Checkmk GmbH excludes all liability for lost profits in the cases covered by section 7.1.
- 7.5 Checkmk GmbH will only be liable for loss of data and programs and outages if (i) the damage could not have been avoided even by taking appropriate precautions to avoid loss of data (in particular, by creating, at least on a daily basis, backups of all programs and data) and by taking appropriate precautions in line with the state-of-the-art technology to avoid outages (in particular, by testing updates in a test environment before using them in a production system and by preparing disaster recovery plans) or (ii) the damage was caused by gross negligence or intentional wrongdoing on Checkmk GmbH's part. All liability for loss of data is subject to the other restrictions in this section 7.
- 7.6 Except in cases where a guarantee has been provided, damage results from intentional wrongdoing or fraudulent concealment of errors or where personal injuries occur, the above limitations on liability apply to all claims for damages and reimbursement of expenses, irrespective of their legal basis and including claims based on tort.
- 7.7 The above limitations on liability also apply where a claim for damages is brought against an employee or agent of Checkmk GmbH.

8 Export Control

- 8.1 The Customer must comply with all relevant national, European and - if applicable - U.S. export control laws and regulations, including their sanctions and embargoes, in their respective valid versions ("**export control regulations**") when downloading and, if applicable, transferring the software, data and information ("**export data**") that Checkmk GmbH provides.

- 8.2 Prior to downloading or transferring the export data or carrying out any other activity in connection with the export data provided by Checkmk GmbH (“**transfer of the export data**”), the Customer must, inter alia, verify and ensure through the adoption of suitable measures
- a. that the transfer of the export data will not violate the provisions of any EU or - if applicable – U.S. embargo including account restrictions on domestic transactions and prohibitions of circumvention that are specified therein;
 - b. that the export data will not be used for nuclear purposes, purposes related to weapons of mass destruction (WMD) or for military purposes in a country under an arms embargo (“**sensitive uses**”) or transferred to third parties who intend to use the data for sensitive uses;
 - c. that the EU and - if applicable – U.S. sanctions lists (i.e., those of the U.S. authorities BIS and OFAC) concerning business transactions with the persons, companies and organizations specified therein are complied with; and
 - d. that the export data will, in particular, not be passed on to persons or companies based in Iran, on Crimea, in Belarus, Cuba, North Korea, Russia, Sudan or Syria.
- 8.3 This Agreement is concluded and performed by Checkmk GmbH subject to the condition that there are no restrictions based on the export control regulations (i.e., prohibitions, licensing obligations), which stand in the way of conclusion or performance.
- 8.4 The Customer will indemnify and hold Checkmk GmbH harmless from and against all actions and claims resulting from a violation of sections 8.1 and 8.2. The Customer will compensate Checkmk GmbH for any damage, loss or costs that Checkmk GmbH incurs due to a violation of sections 8.1 and 8.2.

9 Amendments to these GTC

The ongoing development of Checkmk GmbH’s offering may require to amend these GTC during the term of the Agreement. Checkmk GmbH will give the Customer six (6) weeks’ advance notice of any amendments in text form (e.g., by postal mail, e-mail or fax). The Customer will be deemed to have consented to the amendments if it does not notify Checkmk GmbH in text form (e.g., by postal mail, e-mail or fax) of its rejection of the amendments before their proposed entry into force. The Customer is, in this case, entitled to terminate the subscription for cause. Checkmk GmbH will specifically alert the Customer in its offer as to the effect of deemed consent.

10 Final Provisions

- 10.1 The Agreement, including these GTC, comprises the entire agreement between the parties concerning the subject matter hereof and supersedes any prior agreements between them. Any provisions in the Customer’s general terms and conditions which conflict with, vary from or add to these GTC will only become part of the Agreement if and to the extent that Checkmk GmbH has expressly consented to them. This requirement of consent will apply in

any case, even if, for example, Checkmk GmbH provides goods and services without reservation despite being aware of the Customer's general terms and conditions. The registration of Checkmk GmbH at a supplier portal of the Customer or another platform, which is necessary for the execution of the contractual relationship and which requires consent to terms and conditions of the Customer, shall not be considered as explicit consent. Such terms and conditions will not become part of the Agreement.

- 10.2 Amendments or additions will only be effective if Checkmk GmbH has made the relevant declaration of intent at least in text form (e.g., by postal mail, e-mail or fax). The same applies to any waiver of the text form requirement.
- 10.3 In the event that any provision should be or become invalid in part or in its entirety, this will not affect the validity of the remaining provisions. The parties agree to substitute for any such invalid provision a valid provision that most closely approximates the economic effect and intent of the invalid provision.
- 10.4 The Customer may only set off counterclaims that are undisputed or non-appealable.
- 10.5 The Agreement will be governed by German law, with the exception of those provisions that would result in the application of the laws of a different jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods (CISG) will not apply.
- 10.6 The courts of Munich, Germany, will have exclusive jurisdiction over any disputes arising out of or in connection with the Agreement, including the validity of the Agreement, to the extent permitted by law. Checkmk GmbH reserves the right to bring action against the Customer before the courts of the Customer's principal place of business.
- 10.7 Checkmk GmbH may use the Customer as a reference for other potential customers and as a reference on its website and in marketing materials. It may also use the Customer's logo for these purposes.