

STACKIT Advanced Support (SAS) Terms and Conditions

Preamble

These STACKIT Advanced Support Terms and Conditions supplement the STACKIT Essential Support Terms and Conditions and apply only in those cases where the Customer purchases STACKIT Advanced Support from STACKIT in accordance with the following terms and conditions.

1. General

- 1.1 An agreement is already in place between Schwarz Digits Cloud GmbH & Co. KG ("**STACKIT**") and the Customer on the creation of a STACKIT Cloud Customer account, which enables the purchase of STACKIT Cloud Services from STACKIT ("**Cloud Agreement**").
- 1.2 The standard support service provided by STACKIT in connection with the purchase of cloud services is stipulated in the Cloud Agreement or, if not specified therein, in the service description as STACKIT Essential Support ("**SES**"), available at <https://stackit.com/de/agb/cloud-services> ("**Service Description**").
- 1.3 These STACKIT Advanced Support (SAS) Terms and Conditions ("**SAS Terms and Conditions**") specify additional STACKIT services beyond the scope of the standard service level set out in the Service Description, which are provided to the Customer for an additional fee ("**Advanced Support**"). The defined terms in the Service Description shall also apply to these SAS Terms and Conditions. In the event of any conflicts with the Service Description, the SAS Terms and Conditions shall be controlling.
- 1.4 Advanced Support does not cover STACKIT Cloud Services that have not yet reached the required level of market readiness (General Availability ("**GA**") status); specifically, this excludes preview versions, alpha/beta tests, free trials, trial accounts, etc. Whether a STACKIT Cloud Service has GA status is indicated in the STACKIT Cloud Portal or the underlying STACKIT documentation for the respective STACKIT Cloud Service.

2. Purchase of Advanced Support Services; Changing the Project Assignment

- 2.1 The Customer assigns the STACKIT Cloud Services purchased under the Cloud Agreement in the STACKIT Cloud Portal to so-called projects ("**Projects**").
- 2.2 Advanced Support is ordered on a project-by-project basis using the ordering process in the STACKIT Cloud Portal. By completing the online order process via the portal, the Customer submits a binding offer to purchase Advanced Support for a given Project. The contract for Advanced Support between the Customer and STACKIT as it relates to a given Project shall be concluded once STACKIT issues a declaration of acceptance, which generally takes the form of STACKIT providing Advanced Support to the Customer.
- 2.3 Advanced Support shall apply only to those STACKIT Cloud Services that have been assigned to Projects under the "Advanced Support" package as part of the order or at a later date ("**Assigned Project(s)**"). The Customer can view the status of the Assigned Project and the STACKIT Cloud Services it includes in the STACKIT Cloud Portal.
- 2.4 The Customer may change the status of an Assigned Project in the STACKIT Cloud Portal subject to at least 5 working days' (Monday to Friday, excluding public holidays in the state of Baden-Württemberg, hereinafter "**Working Day**") notice to the end of the calendar month with effect for the following calendar month. A change made less than 5 Working Days in advance shall not take effect until the start of the calendar month after next.

3. Term of Advanced Support

- 3.1 For each Assigned Project, Advanced Support shall start in the calendar month following the calendar month in which Advanced Support was successfully ordered. If Advanced Support is successfully ordered for a given Project within the last 5 Working Days of a calendar month, it will not take effect for that Project until the calendar month after next.

- 3.2 The Customer may terminate Advanced Support for each Assigned Project in the same manner as a change under clause 2.4 with 5 Working Days' advance notice, by clicking on the button provided in the STACKIT Cloud Portal. STACKIT has the right to discontinue the provision of Advanced Support to the Customer for each Assigned Project with four (4) weeks' notice to the end of a calendar month. STACKIT shall notify the Customer in text form of any discontinuation of Advanced Support. The right to terminate for good cause shall remain unaffected.
- 3.3 Notice of termination must be given at least in text form. If the Customer wishes to terminate Advanced Support, it must notify STACKIT by submitting a service request or by clicking the cancel-button provided in the STACKIT Cloud Portal.
- 3.4 Once Advanced Support for Assigned Projects is terminated, the Customer will no longer have access to Advanced Support services for that Project.
- 3.5 The right to terminate for good cause shall remain unaffected.
- 3.6 If the Cloud Agreement between STACKIT and the Customer ends, any Advanced Support services will also end.

4. **Support Requests under the Advanced Support Package**

- 4.1 Customer requests are divided into the categories of "business-critical incident", "incident", and "service request" (collectively "**Support Requests**") based on the content of the request.

- 4.1.1 A business-critical incident exists when, as a result of a disruption in a STACKIT Cloud Service used by the Customer,

- a partial or total failure of essential functions of the Customer's business operations occurs;
- the Customer is at risk of incurring significant loss or damage (e.g., financial or reputational); or
- the Customer can no longer comply with its statutory obligations (hereinafter "**Business-critical Incident**")

- 4.1.2 An incident exists when a service used by the Customer is disrupted, i.e., it deviates from the agreed service and this deviation has an adverse effect on the use of the STACKIT Cloud Service by the Customer ("**Incident**").

- 4.1.3 A service request exists when the Customer submits a general service or support query not based on any disruption to a STACKIT Cloud Service it is using ("**Service Request**"). Processing a Service Request as part of Advanced Support shall not include the provision of additional services to the Customer beyond those specified in these SAS Terms and Conditions, which are to be provided to the Customer for an additional fee (on a time and materials basis).

- 4.2 When submitting the Support Request, the Customer can classify the request accordingly and describe the issue.

- 4.3 If the Customer does not classify the request, STACKIT will classify the request on the basis of the information provided by the Customer.

- 4.4 In any event, STACKIT reserves the right to reclassify the Customer's classifications if STACKIT believes in good faith that the information provided to justify the Customer's classification is not sufficient.

5. **Service Level Reports & Advanced Support Hours**

In addition to the standard services set out in the Service Description, the following services shall be available to the Customer under the Advanced Support:

5.1 Service Level Reports

- 5.1.1 STACKIT shall provide the Customer with reports on the Support Requests submitted in the context of Advanced Support and processed by STACKIT. For this purpose, monthly reports relating to the previous, completed calendar month shall be provided to the Customer on request via a Service Request.

5.1.2 STACKIT's service level reports present the following key figures based on the data available in the STACKIT Help Center:

- Number of Support Requests submitted by the Customer during the calendar month
- Number of Support Requests per category (Incident, Business-critical Incident, Service Request)
- Reaction time per category
- Response time per category
- Fulfillment of the Agreed Reaction Times
- Fulfillment of the Agreed Response Times

5.2 Advanced Support Service Hours

5.2.1 Reaction time is the period of time from receipt of the Customer's Support Request by STACKIT until notification by STACKIT that the Support Request is being processed. The agreed reaction time is 15 minutes ("**Reaction Time**").

5.3 Business-critical Incidents

5.3.1 Business-critical Incidents can be submitted to STACKIT 24/7 via the support channels provided.

5.3.2 Within Advanced Support, Business-critical Incidents are processed 24/7.

5.3.3 For Business-critical Incidents, the time required for the first qualified response ("**Response Time**") is 60 minutes from the time STACKIT receives the incident report.

5.4 Service Requests and Incidents

5.4.1 Service Requests and Incidents can be submitted to STACKIT 24/7 via the support channels provided.

5.4.2 Service Requests and Incidents will only be processed during office hours, i.e., from Monday to Friday between 8:00 a.m. and 6:00 p.m. CET/CEST, except on public holidays in the federal state of Baden-Württemberg ("**Office Hours**").

5.4.3 The Response Time for Service Requests is 8 hours during Office Hours.

5.4.4 The Response Time for Incidents is 4 hours during Office Hours

5.5 STACKIT shall make every commercially reasonable effort under the given circumstances to resolve Support Requests within a reasonable period of time.

6. Customer's General Duties of Cooperation

6.1 The proper performance of the agreed Advanced Support services by STACKIT is only possible if the Customer complies with its duty to provide cooperative assistance with regard to Support Requests.

Within the scope of its duties of cooperation, the Customer shall in particular:

- Check extensively before submitting a Support Request whether it is capable, based on the resources and information available to it, of resolving the issue itself.
- Check before reporting Incidents and Business-critical Incidents whether the cause of the disruption lies within its area of responsibility.
- Assign the task of communicating regarding Support Requests to personnel familiar with STACKIT Cloud Services as well as the relevant Customer environment. In this context, the Customer will ensure that it nominates to STACKIT one or more qualified contact persons with the necessary decision-making authority for each Support Request. The Customer shall ensure that at least one of these contact persons can be reached in writing and by telephone for the period it takes to process a Support Request and shall perform the duties of cooperation of the Customer at the request of STACKIT.
- When Support Requests are submitted, all the information relevant to their processing must be provided. This includes the unique identifiers used to identify the Projects or services to which the Support Requests pertain, detailed descriptions of the observed status of the services in question, a clear formulation of the expected target status, a comprehensive

description of all steps necessary to reproduce errors, a description of activities undertaken up until that point by the Customer and all relevant logs.

- Carefully consider classifying an incident as business-critical. If the Customer identifies a Business-critical Incident, it must provide STACKIT with a clear explanation of the impact on its business operations when reporting the incident. If, after careful consideration of this explanation, STACKIT is unable to conclude that the impact of the incident meets the definition of "business-critical" set out in clause 4.1.1, STACKIT reserves the right to change the classification.
- In the event of an Incident or a Business-critical Incident being caused by major disruption to the STACKIT platform (Major Incident), STACKIT shall inform the Customer thereof. Further communication on the progress in resolving the Major Incident will be provided on the STACKIT Status page until the process is completed. In such a case, the Customer will continuously check the status via the status website.

6.2 The foregoing list of duties of cooperation is not exhaustive. Depending on the needs determined by STACKIT, further cooperation by the Customer may be necessary on a case-by-case basis to allow the adequate processing of a Support Request. STACKIT shall therefore inform the Customer of any cooperative action that is required. Should the Customer fail to meet its duties of cooperation to the necessary extent in the quality or scope as required by STACKIT, STACKIT reserves the right to suspend the processing of a Support Request until the necessary cooperative assistance is provided by the Customer and, should the Customer fail to provide the necessary cooperative assistance even after being requested to do so by STACKIT, cease processing the Support Request.

6.3 In order to process Support Requests of the Customer properly, it may be necessary for STACKIT to access the STACKIT Cloud Services utilized by the Customer. By submitting a Support Request to STACKIT, the Customer consents to such access by STACKIT solely to the extent necessary to process the respective Support Request. This does not affect contractual and statutory obligations on the part of STACKIT, which it must continue to meet in this context.

6.4 The Customer's duties of cooperation stipulated within the Cloud Agreement shall remain unaffected.

7. Remuneration and Billing

7.1 Remuneration Structure

The fee payable by the Customer for STACKIT Advanced Support shall be calculated based on two components: (i) a fixed minimum amount per calendar month, and (ii) a consumption-based amount per calendar month calculated based on the Customer's monthly revenue under the Cloud Agreement.

7.2 Minimum Amount

The minimum amount agreed per calendar month shall be EUR 99 per Assigned Project within the respective calendar month.

7.3 Consumption-based Amount

7.3.1 The consumption-based amount agreed per calendar month shall be determined based on the Customer's monthly net revenue generated under the Cloud Agreement for subscribed STACKIT Cloud Services, purchased in the context of the Assigned Projects under the Advanced Support ("**Relevant Net Revenue**").

7.3.2 The Relevant Net Revenue shall be calculated without deducting any discounts granted to the Customer for the purchase of STACKIT Cloud Services.

7.3.3 If the Relevant Net Revenue for a Project is $\leq$ EUR 1,000 in the respective calendar month, no consumption-based amount will be incurred in that calendar month.

7.3.4 If the Relevant Net Revenue for a Project exceeds EUR 1,000 in the respective calendar month, the consumption-based amount for each full euro by which the Relevant Net Revenue exceeds EUR 1,000 shall be 7% of the amount exceeding EUR 1,000 for that calendar month.

7.4 General Provisions on Remuneration

- 7.4.1 The calendar-monthly fee comprises the minimum amount (clause 7.2) and the consumption-based amount (clause 7.3) and is net of statutory VAT.
- 7.4.2 The fee for Advanced Support shall be due and payable regardless of whether or how often the Customer actually avails itself of Advanced Support.
- 7.5 STACKIT shall be entitled to invoice the Customer for the Advanced Support fee (minimum amount and consumption-based amount, where applicable) after the end of each calendar month. The fee for Advanced Support is shown as a single, cumulative line item on the invoice. The Customer consents to the electronic transmission of invoices.
- 7.5.1 The parties agree that the payment term for all invoices issued under this Agreement shall be 30 days from the date the Customer receives the invoice.
- 7.6 STACKIT shall be entitled to adjust the remuneration components specified in clauses 7.2 and 7.3 with prospective effect by notifying the Customer in text form no later than 2 (two) months before the adjustment enters into force. If the Customer does not agree with the respective adjustment to the fee, it may terminate the Advanced Support service ordered subject to a notice period in the given case in accordance with clause 3.

8. Service Level Breaches

- 8.1 If STACKIT fails to comply with the Reaction or Response Times agreed under clause 3 to the extent specified in the table below regarding the respective fulfillment rate and provided that the Customer has not breached its obligations to provide cooperative assistance, the Customer will receive a credit to their Customer account ("**Service Payback**").
- 8.2 In order to assert a Service Payback claim, the Customer must provide notification in text form within two (2) weeks of receipt of the service level report for the relevant calendar month, stating the Customer number, invoice number and the Project description, that the fulfillment rate for the agreed Reaction and/or Response Times was not complied with. A claim filed after the two (2) weeks have expired is not permitted.
- 8.3 If the claim is justified, the Customer will receive a Service Payback credit to their Customer account for the following billing period.
- 8.4 The amount of the Service Payback always relates to the pro rata invoice amount for the Advanced Support service for the relevant Project and calendar month.
- 8.5 The credited Service Payback is offset against remuneration claims for the Advanced Support service in the subsequent billing period, so that the Customer's fee to be paid is reduced accordingly.
- 8.6 A payout or other reimbursement of the credited Service Payback is excluded.
- 8.7 The following Service Paybacks apply:

Service	Maximum permissible deviation from the target value per calendar month	Percentage Deviation/Amount of Service Payback	
Average Reaction Time across all Support Requests per category for an Assigned Project in the respective calendar month	≤ 10%	≤ 10%	No Service Payback
		> 10% and ≤ 60%	30% of the calendar-monthly fee for the relevant Project
		> 60%	50% of the calendar-monthly fee for the relevant Project

Average Response Time across all Support Requests per category for an Assigned Project in the respective calendar month	≤ 10%	≤ 10%	No Service Payback
		> 10% and ≤ 60%	30% of the calendar-monthly fee for the relevant Project
		> 60%	50% of the calendar-monthly fee for the relevant Project

8.8 Service Paybacks will not be aggregated to determine non-compliance with Reaction and/or Response Times for a project within a given calendar month. Where multiple time targets fall short of the agreed thresholds within a calendar month, the Service Payback shall be granted only once for the relevant calendar month; in this case, the amount of the Service Payback will be based on the greater of the deviations.

8.9 Any further claims of the Customer for a reduction in the agreed Advanced Support fee shall be excluded. Any claims for damages on the part of the Customer shall remain unaffected.

9. Liability

9.1 Regardless of the legal grounds, STACKIT shall be liable for damages in accordance with the statutory provisions in cases of:

- willful or grossly negligent conduct,
- injury to life, limb or health caused by ordinary negligence;
- fraudulent concealment of a defect; and
- for claims of the Customer under the German Product Liability Act (*Produkthaftungsgesetz – ProdHaftG*).

9.2 Without prejudice to the terms of clause 9.1, STACKIT shall be liable for other loss or damage if it was caused by the negligent breach of a material contractual obligation; material contractual obligations are obligations, the satisfaction of which is essential for the due and proper performance of the Agreement, and on the performance of which the Customer would usually, and is entitled to, rely and which protect the Customer's material legal positions under the Agreement ("**Material Contractual Obligation**"). In such cases, STACKIT's liability shall be limited to compensation for typical and foreseeable loss or damage.

9.3 In the event that STACKIT is liable under clause 9.2 above, STACKIT's liability shall be limited to the amount the Customer paid to STACKIT for Advance Support in the last six (6) calendar months prior to the event giving rise to the loss or damage.

9.4 STACKIT shall only be liable for the loss or destruction of data if such loss or destruction was caused willfully or through gross negligence or by a breach of a Material Contractual Obligation by STACKIT. In terms of the amount, STACKIT's liability is limited to the loss or damage that would also have occurred if the Customer had properly backed up the data affected.

9.5 Claims for damages or reimbursement of nugatory expenditure are subject to a limitation period of one (1) year. This does not apply to claims under clause 9.1.

9.6 In all other respects, STACKIT's liability – for whatever legal reason – is excluded.

9.7 To the extent that STACKIT's liability is either limited or excluded, this also applies *mutatis mutandis* to STACKIT's legal representatives, employees, contractors and other vicarious agents.

10. Amendments to the SAS Terms and Conditions

If there is a valid reason to amend or supplement the SAS Terms and Conditions and such amendment or supplement does not unreasonably disadvantage the Customer, in particular because the cost/benefit ratio does not disproportionately shift to the detriment of the Customer, STACKIT shall be entitled to amend the SAS Terms and Conditions, in whole or in part, with prospective effect. Such valid

reasons shall include in particular regulatory or legal reasons, security reasons, enhancing, optimizing or adding services, making technical adjustments and ensuring the functionality of the service. If the SAS Terms and Conditions are amended, the Customer shall be notified of the amendments by e-mail at least eight (8) weeks before the new SAS Terms and Conditions enter into effect. Amendments shall be deemed approved if the Customer, after having received the notice of amendment, does not expressly object to them on or before the date on which they enter into effect. The Customer will be specifically advised in the notice of amendment of this legal consequence, the start of the period, the deadline and the date on which the amendment enters into force. In the event that the Customer objects to the amendment, STACKIT shall be entitled to a right of termination with immediate effect with regard to the Advance Support services. Where an amendment to the SAS Terms and Conditions merely extends or adds (on an optional basis) to the existing services STACKIT provides to the Customer, STACKIT is entitled to notify the customer of such amendments within a shorter period; in such cases, the Customer has no right to object.

11. Miscellaneous

- 11.1 The confidentiality obligations set forth in the Cloud Agreement also apply to these SAS Terms and Conditions.
- 11.2 Should individual provisions of these SAS Terms and Conditions be or become invalid, void or unenforceable, this shall not affect the validity of the other provisions hereof. The parties shall replace any invalid, void or unenforceable provision with a valid and enforceable provision that most closely reflects the economic intent of the original provision. The foregoing shall also apply *mutatis mutandis* to any omissions.
- 11.3 These SAS Terms and Conditions and all legal relationships between the parties arising hereunder shall be governed by the law specified by the parties in the Cloud Agreement.
- 11.4 Exclusive place of jurisdiction for all disputes arising out of or in connection with these SAS Terms and Conditions shall be the place of jurisdiction specified in the Cloud Agreement.