

General Terms & Conditions for Subscriptions

1.	Scope of Application	1
2.	Subscription	1
3.	Term and Termination	2
4.	Payment and Invoicing.....	2
5.	Confidentiality and Data Protection	3
6.	Remedies for Defects.....	4
7.	Limitation of Liability	5
8.	Export Controls	6
9.	Amendments to these GTC.....	7
10.	Final Provisions	7

1. Scope of Application

These General Terms & Conditions for Subscriptions govern the provision of standard software by tribe29 GmbH (“tribe29”). These GTC will also apply in the absence of any express reference to these GTC.

2. Subscription

- 2.1 A Checkmk subscription grants the Customer a perpetual right to use the software pursuant to the provisions of the End-User License Agreement (EULA) in effect as of the time the software is downloaded as well as the right to download the software from a download server operated by tribe29 during the term of the subscription.
- 2.2 tribe29 will make the software available exclusively as a download. tribe29 will provide the Customer with personal login data to access the download area. The Customer will be responsible for the installation and configuration of the software.
- 2.3 As part of the subscription, tribe29 will make available updates from time to time that may include expanded functionalities as well as bug and security fixes.
- 2.4 Changes in monitored systems may affect the functionality of the software. Among other things, the software makes available over 1,700 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. tribe29 will adapt the Checkmk software and the most important plug-ins to accommodate such modifications pursuant to its product roadmap during the term of the subscription. tribe29 will not, however, be under any obligation to make such adaptations. Customers may have adaptations made by tribe29 or its partners for a fee. In the case of tribe29, this requires the conclusion of a Support Agreement.
- 2.5 The Customer may not assign or resell the subscription. Resale is only permitted on the basis of a separate partnership agreement with tribe29.
- 2.6 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. tribe29 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 tribe29.

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 right to terminate for cause 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 termination of the subscription. The rights of use granted under the EULA will not be affected in the case of 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.
- 3.5 The possibility of perpetual use of commercial versions of Checkmk even after termination of the subscriptions represents a special advantage over many products of other vendors. To prevent abuse, tribe29 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 will be deemed to consist of a monitored data point, for example, the CPU load of a specific device. A given device may, therefore, comprise numerous services. Services that are monitored only by Checkmk instances used exclusively to test Checkmk will not be counted for such purposes. If the Customer monitors a specific service from several Checkmk instances simultaneously (e.g., for redundancy or testing purposes), that service will be counted only once.
- 4.3 The price model has price intervals reflecting the number of services monitored. The Customer must select the price interval that covers the number of services monitored under the subscription (including services of Affiliated Entities and Managed Services Clients, as defined in the EULA) so that the number of services monitored will at no time exceed that covered by the license.
- 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) Affiliated Entities as well as the use of the software in the context of Managed Services (both as defined in the EULA) .
- 4.5 tribe29 will invoice the subscription price in advance at the beginning of each contract year. The Customer will upon request provide tribe29 with information on the number of monitored services and make available the corresponding audit reports insofar as such reports can be generated by the software. The Customer will inform tribe29 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 from tribe 29 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, tribe29 may block the Customer's access to the download area for as long as the Customer remains in arrears.
- 4.9 tribe29 reserves the right to adjust its prices at the beginning of every renewal period. tribe29 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 elements of the Checkmk Software which are exclusively licensed under the Checkmk Enterprise License ("**Proprietary Software**"), the login data for the download area and the prices and contractual conditions individually agreed with the Customer. The duty of confidentiality covers information which one party discloses to an affiliate of the other party within the meaning of §§ 15 et seqq. of the Stock Corporation Act (*Aktiengesetz – AktG*).

- 5.2 If any information pursuant to section 5.1 does not meet the requirements for a business secret under the Business Secrets Act (*Geschäftsgeheimnisgesetz – GeschGehG*), it will nonetheless be subject to the confidentiality obligations pursuant to this section 5.
- 5.3 Each party undertakes to treat confidentially the other party's confidential information 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 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 tribe29 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 tribe29 may, at its option, remedy a defect in the software by fixing the defect (repair) or by delivering software free from defects (replacement). It may be necessary for the purposes of remedying the defect that the Customer install a new version of the software or an update or a patch. In such cases, 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 tribe29 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 tribe29 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 tribe29 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, tribe29 will be entitled to remedy the defect by delivering a new version or an update of the software 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, tribe29 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 tribe29 of this without delay and, to the extent possible, allow tribe29 to defend the claim. The Customer will provide tribe29 with all reasonable support in the defense of the claim. In particular, the Customer will provide tribe29 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 tribe29 or does not in fact exist, tribe29 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 tribe29 will not be liable if the use of the software is impaired due to improper installation, operation or maintenance. In particular, tribe29 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 tribe29.
- 6.11 Where the Customer makes modifications to the software or a third party does so on its behalf, tribe29 will not be liable for any defects unless the Customer can prove that the modifications do not unreasonably impact tribe29's ability to analyze and remedy the defects.
- 6.12 tribe29 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 tribe29 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, tribe29'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 tribe29'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 tribe29 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 tribe29 in the respective contract year.
- 7.4 tribe29 excludes all liability for lost profits in the cases covered by section 7.1.
- 7.5 tribe29 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 tribe29'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 tribe29.

8. Export Controls

- 8.1 The Customer must comply with the embargo and (re)export control regulations of the Federal Republic of Germany, the European Union and the United States of America (insofar as applicable from the US point of view and German/EU law does not preclude such application) when accessing or transferring software, data and information or the login data for the download area made available by tribe29 to third parties (including the Customer's affiliates).
- 8.2 Prior to such access or transfer, the Customer will in particular determine and take suitable action to ensure,
- a. that the Customer is not in violation of any embargo of the European Union, the United States of America and/or the United Nations – also taking into account any restrictions on domestic business and any anti-circumvention provisions – by reason of having accessed or transferred to third parties or made available other economic resources in connection with software, data and information made available by tribe29;
 - b. that such software, data and information made available by tribe29 is not intended for any application involving defense, nuclear or weapons technology that is prohibited or requires regulatory approval unless such required approval has been obtained; and
 - c. that the Customer is in compliance with the provisions of all relevant sanctions lists of the European Union and the United States of America concerning trade with undertakings, individuals or organizations named in such lists.
- 8.3 Performance by tribe29 will be subject to the condition that no obstacles based on national or international provisions of foreign trade law or embargos and/or other sanctions stand in the way of performance.

9. Amendments to these GTC

The ongoing development of tribe29's offering may require to amend these GTC during the term of the Agreement. tribe29 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 tribe29 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. tribe29 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 we have expressly consented to them. This requirement of consent will apply in any case, even if, for example, we provide goods and services without reservation despite being aware of the Customer's general terms and conditions.
- 10.2 Amendments or additions to the Agreement, including these GTC, will only be effective if tribe29 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. tribe29 reserves the right to bring action against the Customer before the courts of the Customer's principal place of business.
- 10.7 tribe29 may use the Customer as a reference for other potential customers and as a reference on its website. It may also use the Customer's logo for these purposes.