

Sales and delivery terms and conditions - ReVirt

PART I - GENERAL CONDITIONS

1. APPLICATION OF THE SALES AND DELIVERY TERMS AND CONDITIONS

- 1.1 The sales and delivery terms and conditions (the "Terms and Conditions") are applicable to all offers, order confirmations, sales and deliveries from any.cloud A/S (the "Company") regarding ReVirt.
- 1.2 A customer (the "Customer") is obligated to comply with the agreement with the Company (the "Agreement") and these Terms and Conditions throughout the period of the Agreement.

2. THE COMPANY

- 2.1 The Company is a member of Brancheforeningen for IT- hostingvirksomheder i Danmark [the industrial association for IT hosting companies in Denmark] ("BFIH") and has received BFIH's quality label.
- 2.2 The Company has also received ISAE 3402 Type II certification from an independent auditor regarding security of the description of controls, their design and functionality with regard to hosting services.

3. THE SOLUTION

- 3.1 The Company's ReVirt Solution in Cloud Storage, based on Veeam licenses (the "Solution").
- 3.2 All services that the Customer orders from the Company in addition to the specific Solution as stated in the Agreement are additional optional services, which the Company must pay for separately. This includes the purchase and rent of Veeam licenses, SureBackup test, Disaster Recovery Solution and Veeam One. These Conditions apply to all additional options.
- 3.3 The Company's services and liability only include the Company's Solution. The Company has no liability for the Customer's own use, including use by employees, applications, Internet solutions and functionality, as well as other conditions that are outside of the Company's Solution or its control.
- 3.4 The Solution is based on Veeam. The Customer is obligated to comply with all obligations in accordance with the conditions to which the Customer has obligated itself to with regard to Veeam. The Customer's relationship with Veeam is in every way of not interest to the Company and the Company is in every way not liable for the use of or the content of Veeam, including use, conditions, licenses, functionality or uptime, just as the Customer is aware that changes in Veeam may result in changes, limitations or modifications in the Solution. The Company is, in all respects, not liable for such changes, limitations or modifications.

4. INVOICING

- 4.1 Unless otherwise specifically stated, all prices in the Company's offer, order confirmations and other references are in Danish kroner (DKK) exclusive of sales tax. Unless otherwise stated in the material mentioned, the Company reserves the right to change prices up to the time delivery has taken place.
- 4.2 The Customer must pay for the Solution monthly in arrears. All additional options are paid for separately and in compliance with the conditions that the Company determines in connection with each additional option.
- 4.3 All additional optional services are invoiced in accordance with the prices that are stated at www.revirt.dk.

5. TERMS OF PAYMENT

- 5.1 The Company's terms of payment are 8 days net from the invoice date unless otherwise agreed in writing by the Company and the Customer.
- 5.2 In case of payment after the deadline, the Company calculates interest on overdue payment, which comprises 1.5% per month started, calculated from the deadline. In addition, an administration fee of at least DKK 100.00 is added in connection with written reminders. The Company sends reminders every eight days after the deadline, and after the third reminder the case is given to the Company's lawyer for collection.

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- 5.3 Payment in full satisfaction of the debt may only be made to the Company's address unless otherwise stated in the invoice or otherwise notified by the Company to the Customer in writing.
- 5.4 The Customer is not entitled to deduct any counterclaims that have not been recognized by the Company in writing and has no right to withhold any part of the purchase price due to such counterclaims.
- 5.5 In case of lack of prompt payment on the part of the Customer, the Company is entitled to suspend the Agreement so that the Customer does not receive the services included in the Solution until the Customer has paid. The services covered by the Solution are reopened when the amount due has been paid. If the Customer has not paid no later than 10 days after having received the first reminder, this comprises a material breach on the part of the Customer.
- 5.6 All prices are adjusted once a year in accordance with the net price index, but no less than 3%. If Statistics Denmark stops calculating the net price index, in the future, the adjustment must be made on the basis of another index that reflects price developments.

6. AGREEMENT PERIOD

- 6.1 The Agreement is mutually irrevocable by the Parties during the minimum agreement period, as stated in the Agreement (the "Agreement Period") and may be terminated no earlier than with one month's written notice until termination upon expiry of the Agreement Period. If the Agreement is not terminated in accordance with this, it is automatically extended by three months at a time until termination with one month's written notice to the end of a month.

7. UPTIME

- 7.1 The Company guarantees an uptime of 99.5% for general operations (measured for the latest invoice period).

- 7.2 Uptime is defined as

$$\frac{\text{Availability}}{(\text{Total time}) - (\text{planned downtime})} * 100$$

where

- i) availability is the number of hours in the latest invoice period, when the Solution has been available to the Customer.
- ii) The total time is the combined number of hours in the invoice period and
- iii) Planned downtime is the number of hours in the latest invoice period, when the Solution has not been available to the Customer as the result of planned service and maintenance in accordance with section 9.1.

- 7.3 In the following cases, the Solution is regarded as having been available to the Customer and is, therefore, regarded as uptime:

- i) In case of errors, deviations, delays, changes or similar events affecting hardware, software, systems or equipment that is provided by a third party and is outside of the Company's control,
- ii) In case of errors, deviations, delays, changes or similar events in or on the Customer's system, equipment or other items that are carried out by a third party or that is outside of the Company's control,
- iii) In case of errors, deviations, delays, changes or similar events in the communication between the Customer and the Company,
- iiii) In case of other conditions that are caused by the Customer, the Customer's equipment or software, the Customer's employees or a third party employed by the Customer.

- 7.4 If the uptime guarantee in section 7.1 is not fulfilled, in the next invoice period, the Customer will receive a reduction of DKK 1,000 per 0.1% of the total uptime during the uptime guarantee, but no more than DKK 10,000.

8. SERVICE AND MAINTENANCE

- 8.1 The Company is entitled to carry out planned service, repairs and maintenance of the Solution, on the condition that

iii) in case of other conditions that are caused by the Customer, the Customer's equipment or software, the Customer's employees or a third party employed by the Customer.

7.4 If the uptime guarantee in section 7.1 is not fulfilled, in the next invoice period, the Customer will receive a reduction of DKK 1,000 per 0.1% of the total uptime during the uptime guarantee, but no more than DKK 10,000.

8. SERVICE AND MAINTENANCE

8.1 The Company is entitled to carry out planned service, repairs and maintenance of the Solution, on the condition that

- i) The Company notifies the Customer no later than two weekdays prior to the planned work and
- ii) The Company's service, repair and maintenance work must, to the greatest possible extent, take place between 10:00 pm and 6:00 am.

Such planned downtime must not impact the Company when calculating uptime.

8.2 The Company reserves the right to carry out emergency work regarding the Solution. Notice regarding emergency work must be given as quickly as possible and, as far as possible, by email to the Company's contact at the Customer. The Company must attempt to minimize emergency work, and, as far as possible, postpone it to late evenings/nights and/or weekends.

Such emergency work comprises downtime when calculating the extent to which the uptime guarantee has been fulfilled.

8.3 If the Customer wants to change, add to, or expand the Solution, the Customer must send a written request for this to the Company. Thereafter, the Company must, within a period of five weekdays, carry out the changes wanted, unless the Company, within three days after receipt of the request from the Customer, notifies the Customer that the changes wanted are in breach of this Agreement, applicable legislation or are not technically possible. If the Customer wants to expand the Solution, the Customer must pay for this in accordance with the Company's price list that is applicable at any given time. The time that the Company must use to update the Solution in accordance with this, is extra work.

8.4 The Customer must assist the Company with all types of troubleshooting at its own expense.

8.5 The Customer is obligated to keep the Company informed about the Company's technical and administrative contacts at the Customer on an ongoing basis.

8.6 The following applies with regard to response time for technical errors in the Company's delivery in the period from Monday through Friday from 9:00 am to 5:00 pm:

8.6.1 The Company must start remedying errors no later than two hours after having received an error message or having been made aware of an error through monitoring.

8.6.2 In case of serious incidents, the Company must begin remedying errors within 90 minutes after having received an error message or having been made aware of an error through monitoring.

8.7 The following applies with regard to response time outside of the period of time mentioned in section

8.6 :

8.7.1 The Company must start remedying errors no later than four hours after having received an error message or having been made aware of an error through monitoring.

8.7.2 In case of serious incidents, the Company must begin remedying errors within two hours after having received an error message or having been made aware of an error through monitoring.

9. RELIABILITY

9.1 Reliability is defined as the mean time between errors, calculated in accordance with sections 7 and 8.

9.2 The Company guarantees 99.5% reliability. In case the reliability guarantee is not fulfilled, in the next invoice period, the Customer will receive a reduction of DKK 1,000 per 0.1% of the total reliability during the reliability guarantee, but no more than DKK 10,000.

10. RESTORATION TIME

Restoration time is defined as the time it takes the Company to restore the Customer's Solution in case of an operations interruption. The restoration time depends on the Solution, the product, the Customer and third parties, and therefore varies according to the specific conditions. The Company ensures, however, that it is able to restore every unit in the data center, to which the Company is entrusted in accordance to the Agreement and these Terms and Conditions, no later than three days after the Company has received notification of an operations interruption.

11. COMPLAINTS

10. RESTORATION TIME

Restoration time is defined as the time it takes the Company to restore the Customer's Solution in case of an operations interruption. The restoration time depends on the Solution, the product, the Customer and third parties, and therefore varies according to the specific conditions. The Company ensures, however, that it is able to restore every unit in the data center, to which the Company is entrusted in accordance to the Agreement and these Terms and Conditions, no later than three days after the Company has received notification of an operations interruption.

11. COMPLAINTS

- 11.1 The Customer must complain to the Company in writing immediately and no later than three days after the Customer was made aware of or should have been aware of a deficiency in the Solution. The Company is free to choose how any deficiencies are to be remedied.
- 11.2 The Customer itself is responsible for covering all costs in connection with remedying errors and omissions that are due to the Customer's own conditions, including the Customer's use of the Solution, the Customer's lack of fulfillment of the Agreement or Terms and Conditions, or conditions that cannot be controlled by the Company.

12. LIMITATION OF LIABILITY

- 12.1 The Company is regarded as being released from every obligation to the Customer resulting from conditions that prevent the fulfillment of the Agreement or make fulfillment burdensome, including industrial disputes and any other situation that the Company is not in control of, such as fire, war, mobilization or martialing military forces to a similar extent, requisitioning, confiscation, foreign exchange restrictions, rebellion and unrest, lack of transportation, general shortages, restrictions of motive power and lack of or delays of deliveries from suppliers, which are due to any of the situations mentioned in this section.
- 12.2 The Company may in no case be made liable for operations losses, lost profits or other indirect losses or resulting losses, including costs related to identifying or localizing deficient products or damage.
- 12.3 The Company's liability is, in any case, except for cases of gross negligence and deliberate behavior, limited to the amount that is invoiced by the Customer in accordance with the Agreement.
- 12.4 The Company has no liability with regard to loss of or damage to data etc. unless this is due to gross negligence or deliberate behavior on the part of the Company. The Customer is obligated to insure itself against loss of data etc.
- 12.5 The Company has no liability for whether the content of the Customer's data complies with applicable legislation. If the Company is made liable with regard to a third party as a result of the material that is in the Customer's data, the Customer is obligated to indemnify the Company in this case.
- 12.6 The Company may in no circumstances be made liable for the Customer's use of or changes to the Solution, including use by employees, applications, Internet solutions and functionality, as well as other conditions that lie outside the Company's Solution or control.

13. SUBSUPPLIERS

- 13.1 The Company is entitled to use suppliers for carrying out services that are covered by the Solution in whole or in part. In this connection, if it is necessary for the supplier to be able to carry out its task for the Company, the Customer may give permission to transfer data about the Customer to the supplier.

13. SUBSUPPLIERS

13.1 The Company is entitled to use subsuppliers for carrying out services that are covered by the Solution in whole or in part. In this connection, if it is necessary for the subsupplier to be able to carry out its task for the Company, the Customer may give permission to transfer data about the Customer to the subsupplier.

13.2 Price increases for a subsupplier's products may, without prior notice, be charged to the Customer.

14. DUTY OF CONFIDENTIALITY

14.1 Each of the Parties and its employees have duty of confidentiality during and after the Agreement period regarding every condition of which they may become aware at the other Party or third party, and if secrecy due to the nature of the case is required or is made obligatory by the other Party. This does not, however, apply to information that is generally available. Neither may either Party exploit such information itself at the expense of the other Party or third party.

14.2 All information, regardless of whether it is written, verbal or electronic, which is provided by the Company to the Customer in connection with the Agreement and the services that are delivered in accordance with the Agreement, must not be copied, divulged, reproduced or given to third parties without the written consent of the Company.

15. BREACHES

15.1 If one of the Parties is in material breach of its obligations with regard to this Agreement, or in case of bankruptcy, liquidation or suspension of payments, each of the Parties is entitled to terminate the Agreement with immediate effect and demand compensation in accordance with the general rules of Danish law. As a point of clarification, any type of lack of payment on the part of the Customer in accordance with these Terms and Conditions, violations of the rights of third parties, including violations of copyright, patent rights, license rights, trademarks or protection of designs, comprises a material breach.

15.2 If there is material in the Customer's data that is criminal, material that violates the rights of third parties, material that is in violation of applicable legislation or material that offends ethically or morally, the Company is entitled to terminate, suspend or end the Agreement with immediate effect.

15.3 In case of breaches, the Company is entitled to demand compensation in accordance with the general rules of Danish law.

16. AMENDMENTS TO THE TERMS AND CONDITIONS

16.1 Significant changes to the Terms and Conditions, including prices, payment, notification of termination and significant changes of the content of the services that are delivered in accordance with this Agreement, may only be carried out by the Company with three months' notice to the first day of a month.

17. DISPUTES AND APPLICABLE LAW

17.1 Every dispute between the Company and the Customer resulting from an agreement between the Parties or understanding of these sales and delivery terms and conditions must be decided by a Danish court in the Company's venue. However, the Company is entitled to demand that a dispute be decided in accordance with the rules of the Danish Institute of Arbitration.