

## COUNTRY-SPECIFIC TERMS

### GERMANY

#### GENERAL TERMS

The following terms modify the terms set forth in the General Terms for Orders placed by Customers (or Partners) in Germany.

Section 5.5 (Intellectual Property Rights and Protection) of the General Terms will be replaced with the following Section 5.5:

- 5.5 Entire Liability.** This Section states NetApp's liability and Customer's remedies for IP Claims. Any further damage claims based on IP Claims and not covered by the provisions in this Section will be subject to the liability provisions in Section 6.

Section 6 (Limitation of Liability) of the General Terms will be replaced in its entirety with the following Section 6:

#### **6. LIMITATION OF LIABILITY**

Regardless of the basis of the claims, NetApp will be liable only in accordance with the following provisions:

- 6.1 Breach of Essential Contractual Obligations.** In the case of slight negligence, NetApp will be liable for the breach of essential contractual obligations, the fulfillment of which is essential for the proper execution of the contract, the breach of which endangers the achievement of the purpose of the contract and on the observance of which the Customer regularly relies and may rely. In these cases, NetApp's liability is limited to the damage amount typical for the type of contract and reasonably expected by each party upon entering into the respective agreement due to the circumstances known at the time. In the event of loss of data, NetApp's liability is limited to the typical recovery effort that would have occurred if Customer had carried out proper and regular data backup in accordance with generally accepted industry standards for data backups. NetApp will not be liable insofar as the damage is due to the fact that Customer has failed to carry out proper and regular data backup.
- 6.2 Breach of Other Obligations.** In cases of slight negligence other than those set out in Section 6.1. above, NetApp's liability is excluded.
- 6.3 Liability Limitation.** NetApp's liability according to Section 6.1 is limited to an amount not to exceed US\$1,000,000. This limitation is cumulative and not per incident.
- 6.4 Exceptions.** The limitations set forth in Sections 6.1, 6.2, and 6.3 will not apply to liability for claims arising from: (a) injury to life, body and health; (b) intentional or grossly negligent breach of duty by NetApp and its legal representatives or subcontractors; (c) breach of guarantee for the condition of the Product or fraudulent misrepresentation; (d) IP Claims for which NetApp indemnifies Customer under Section 5.2 (IP Claims) and 5.3 (Remedies); or (e) claims based on the German Product Liability Act.
- 6.5 Disclaimer of Liability for Trial/Evaluation Products and Services.** NetApp disclaims all liability arising out of Customer's use of any trial or evaluation Product or Service (including without limitation any Beta, No-Charge, or Trial Cloud Service as defined in the General Terms), except for claims based on willful breach of duty by NetApp.
- 6.6 Representatives and Subcontractors.** If and to the extent that NetApp's liability is excluded or limited, this also applies to the personal liability of employees, other members of staff, representatives, suppliers and subcontractors of NetApp.

**Governing Law.** In accordance with **Section 10.17 (Contracting Entity, Notices, Governing Law, and Venue)** of the General Terms, the following will apply:

These Terms are governed by and construed in accordance with the laws of the Federal Republic of Germany, excluding its conflict of laws rules; any dispute, controversy or claim arising under or in connection with these Terms will be subject to the exclusive jurisdiction of the competent courts of Munich, Germany.

## **SOFTWARE TERMS**

**The following terms modify the terms set forth in the Software Terms for Orders placed by Customers (or Partners) in Germany.**

The first sentence of **Section 3.1 (Software Warranty)** of the Software Terms will be replaced with the following revised sentence:

NetApp warrants for a period of 12 months from the initial delivery of the Software (“Software Warranty Period”) that: (a) the Software will materially conform to the then-current Documentation; and (b) to the extent Software is delivered on media, the Software media will be free from physical defects.

The remainder of Section 3.1 of the Software Terms remains unchanged.

## **CLOUD SERVICE TERMS**

**The following terms modify the terms set forth in the Cloud Services Terms for Orders placed by Customers (or Partners) in Germany.**

The following additional Section 5.3 of the Cloud Services Terms will apply:

**5.3 Damage Claims Based on Defects.** Damage claims based on Section 536a German Civil Code (BGB) will be limited to cases of defects that already existed at the time the contract was concluded.

**Section 6.1 (Suspension/Termination)** of the Cloud Services Terms will be replaced in its entirety with the following Section 6.1:

**6.1 Suspension/Termination.** Notwithstanding Section 9.2 (Termination) of the General Terms, a Cloud Service subscription for a specific term may not be terminated by Customer before the end of such subscription term. NetApp may suspend or terminate Customer’s access to, and use of, any Cloud Service if Customer (a) fails to remit payments when due; (b) otherwise breaches these Cloud Services Terms or the General Terms, as applicable; or (c) uses the Cloud Services in a manner that violates the law. NetApp will provide reasonable notice before suspending Customer’s access to a Cloud Service unless NetApp, in its sole discretion, believes an immediate suspension or termination is required.

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