

## COUNTRY 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.

## **KEYSTONE STAA S TERMS**

**The following terms modify the terms set forth in the Keystone SaaS Terms for Orders placed by End Users (or Partners) in Germany.**

**Section 4 (Service Levels; Warranty and Disclaimer).**

Section 4.2 of the Keystone SaaS Terms will be replaced with the following Section 4.2:

**4.2 Warranty and Disclaimer.** NetApp warrants that StaaS Services will be performed in a professional and workerlike manner consistent with generally accepted industry practices and in material conformance with the Service Description.

- a. NetApp’s warranty obligations do not apply for claims that are attributable to: (a) improper usage, site preparation or site or environment conditions or other non-compliance with the Documentation, (b) changes or inappropriate maintenance or configuration of the StaaS Products that were not completed or authorized by NetApp, (c) malware or viruses not introduced by NetApp, (d) negligence by the End User or (e) any damage to the StaaS Products caused by accident, fire, water, electrical faults or other reasons beyond the control of NetApp.
- b. Without prejudice to the nature of the contract and to the extent applicable under mandatory local law, sections 536 and 536a of the German Civil Code (BGB) are excluded. Warranty claims are time barred after 12 months. For the avoidance of doubt End User’s rights of unjustified enrichment (Ansprüche aus ungerechtfertigter Bereicherung) shall not be affected.
- c. NetApp does not give a guarantee (Beschaffenhheitsgarantie) in relation to the StaaS Products or StaaS Services that would entail an unlimited liability of NetApp or a liability regardless of negligence or fault pursuant to the German Civil Code, except if an unlimited liability and/or liability regardless of negligence or fault has been expressly agreed in writing. The simple use of terms such as “to guarantee”, “to ensure” or words to similar effect in these Terms, any Order or the Service Description shall not be considered sufficient to establish such liability and shall constitute a binding contractual commitment of NetApp that is subject to the agreed limitation of liability.

The following additional provision shall be added as Section 4.3:

**4.3 Remedies.** End User inquiries regarding any breach of warranty or failure to perform the StaaS Services should be directed to the Keystone Success Manager within ten (10) days after the date on which such breach or failure first occurs. In such case, NetApp shall investigate any such failure and provide the End User with a documented root cause analysis. Based on the documented root cause analysis, NetApp will use reasonable efforts to correct such failure within a reasonable period of time, and, if applicable, take the necessary actions described in the documented root case analysis to prevent further service level failures. If NetApp determines that additional products are required to maintain applicable Service Levels, NetApp will notify End User and NetApp will deliver (or cause its authorized Partner to deliver) the appropriate products only after NetApp receives written End User confirmation. If, after reasonable efforts, NetApp is not able to correct such deficiencies for reasons for which NetApp is responsible, then End User may terminate the Order for cause by providing written notice to NetApp and NetApp shall refund End User any pre-paid fees for the StaaS Service that will not be provided as a result of the termination.

**Section 7 (Term and Termination).** Section 7.2(a) shall be deleted and replaced in its entirety with the following

- (a) End User fails to pay two (2) consecutive undisputed Fees or a significant part thereof when due, and such failure continues for a period of thirty (30) days after delivery of notice in respect of such late payment;

**Section 9 (Limitation of Liability)** For the avoidance of doubt, the amendments to **Section 6 (Limitation of Liability)** of the General Terms in these Country Terms Germany also apply to any loss or damages under the Keystone StaaS Terms.

**Section 10 (Intellectual Property Rights and Protection)** For the avoidance of doubt, the amendments to Section 5.5 of the General Terms in these Country Terms Germany also apply to any IP Claims under the Keystone StaaS Terms.

**Section 11.1 (Order of Precedence)** of the Keystone StaaS Terms will be replaced in its entirety with the following Section 11.1:

**11.1 Order of Precedence.** Notwithstanding any provision of the Purchase Terms, in the event of a conflict between the terms set forth in such Purchase Terms, any related supplemental services terms, the Country Specific Terms, the Keystone StaaS Terms or an Order, the following order of precedence will apply:

1. the applicable Order for StaaS Services (excluding any pre-printed terms on an End User purchase order);
2. the Country Terms relating to Keystone
3. the Keystone StaaS Terms; and
4. the Purchase Terms (together with any supplemental terms).

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

These Keystone StaaS Terms and any Orders entered into by End User pursuant to them in Germany 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.

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