

Support- and Service-Options

The SMS Gateway Support Services for brevis.one „Full Coverage Standard 8x5“ and „Full Coverage Premium 24x7“ offer reliable and quick replacement for your hardware appliance, and additional services. The shipment of a new unit usually is expedited on the next business day. All replacement units are new or refurbished and checked. Full Coverage service options contain SAM Software Asset Management, which offers valuable software updates for your unit.

The SAM Software Asset Management Plan delivers important software updates for your SMS Gateway. For additional service options, consider the Full Coverage plans.

SCOPE OF SERVICES

Standard 8 × 5

Fast. Flexible. Reliable.

- Service Monday through Friday, 09.00 - 17.00 CET (public holidays in the state of Saarland not included).
- Replacement in advance.
- Shipment on the next business day.
- Replacement units and parts are new or refurbished and tested.
- Attractive option instead of repair on site.
- Instructions to return broken unit.
- Remote analysis / trouble shooting support and technical assistance by phone and E-Mail.
- We start handling incidents under this option within four hours during service hours.
- Reduced downtime.
- Full 1st and 2nd Level Support, also in questions around configuration and integration.
- Includes SAM Software Asset Management.

Premium 24 × 7

For specific demands.

- Report hardware failures around the clock, 365 days per year.
- Replacement in advance.
- Shipment on the next day possible.
- Replacement units and parts are new or refurbished and tested.
- Service Monday through Friday, 09.00 - 17.00 CET (public holidays in the state of Saarland not included).
- Instructions to return broken unit.
- Remote analysis / trouble shooting support and technical assistance by phone and E-Mail.
- We start handling incidents under this option within four hours during service hours.
- Reduced downtime.
- Full 1st and 2nd Level Support, also in questions around configuration and integration.
- Includes SAM Software Asset Management.

SAM Software Asset Management

- Included for one year with each purchase.
- Get on SAM from the 2. year after purchase to keep your SMS gateway current.
- Receive updates for your unit for one year.
- Includes limited assistance with your questions by E-Mail only.

All prices listed are for one year and one device. Service options have to start immediately after purchase or prior contract periods, the SAM Software Asset Management for one year is included in the purchase price of each unit. Later purchases for expired Service Options or SAM are calculated retroactively from the original date of purchase respectively the last contract end date plus a non-discountable reinstatement fee of 10% on the fees for the time elapsed. Support- and Service-Options have to be purchased for a minimum of one year in advance and can be purchased for a maximum period of five years in advance. Fees have to be paid in full in order for the service agreement to become active.

Upon request, we offer automatic renewal at the end of each period (automatic renewal invoice). In all other cases, service options have to be renewed actively by submission of a purchase order. Shipment for replacement in advance only within the EU.

The terms and conditions of BASIS Europe GmbH and the respective contractual conditions in their respective version apply.

All prices ex. VAT.

Get in touch

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brevis.one

GENERAL TERMS AND CONDITIONS

PART I: GENERAL PART

General provisions and sale of the „Devices“ „brevis.one SMS Gateway“

§ 1 Subject matter of the contract, contractual components, defence clause and definitions

1) The services of BASIS Europe GmbH (hereinafter BASIS) are directed exclusively at entrepreneurs within the meaning of § 14 BGB (German Civil Code).

2) These General Terms and Conditions (hereinafter GTC) become a legal part of the individual contracts on the sale of „Devices“, the provision of updated „OEM Software“ and the rendering of support services.

3) The quality of the „Devices“ delivered by BASIS is determined solely by the service description of the „Devices“ that is valid at the time the contract is concluded and that is made available to the Client together with the submission of the offer. The quality of the updated „OEM Software“ is governed by the respective release notes. The content of the services for the provision of „Releases“ and for the rendering of support services is governed by the content of the respective „Individual Contract“.

4) All offers are subject to the timely and complete delivery to BASIS by its own suppliers.

5) The components of the contract are, in this order:

a) The provisions of Annex AVV

b) The „Service Description“, which governs services, technical requirements, prices etc.

6) The GTC of BASIS apply exclusively. Terms and conditions of the Client do not become part of the contract.

7) Insofar as „OEM Software“ of manufacturers other than BASIS is provided to the Client under this contract, the legal provisions of the respective manufacturers apply to the granting of the rights of use. These are referenced from the respective „Individual Contract“ and handed over to the Client with the contract documents.

8) Definitions

a) „Delivery“: in the context of the provision of the „Devices“, delivery means the handover of the „Devices“ to the Client. In the context of the release contract the term is used as follows: „Delivery“ is the provision of the possibility to download a new „Release“ of the „OEM Software“, of which the Client is notified in text form.

b) „Change“: is any modification, amendment, extension or other deviation from the scope of services agreed upon at „conclusion of the contract“ that is requested by the Client and agreed in writing.

c) „Documentation“: operating manual for the „Device“. It is made available to the Client online in the current version at all times.

d) „Individual Contract“: the document „Individual Contract“ which reflects the individual contract concluded between the Client and BASIS. It must be concluded at least in text form.

e) „Device“ means the device named in the „Individual Contract“ and its annexes that is the subject matter of the contract. The „Device“ consists of the hardware and of the „OEM Software“ installed on the hardware.

f) „OEM Software“ is the standard software that is installed on the „Devices“ and that is required for their operation.

g) „Release“: is the generic term for new software versions of the „OEM Software“.

h) „Malfunction“: is a situation in which it is not yet clear whether a faulty function of the „Device“ is attributable to BASIS or whether a „technical fault“ exists.

i) „System“: consists of the „Device“ provided in each case as well as of the „System Environment“ required for its operation.

j) „System Environment“: technical surrounding systems that are required for the proper operation of the sold or leased „Device“. The required and the recommended „System Environment“ are described in the respective service description or in the technical data sheet of the „Device“.

k) „technical fault“: „technical fault“ means that the „Device“ made available to the Client or the maintenance service does not function without this being attributable to BASIS.

l) „technical Change“ means a modification of the „Device“ or of the „System Environment“.

§ 2 Safety instructions

1) Data protection in remote maintenance

The „Contracting Parties“ are aware of the high requirements of data protection. They have therefore concluded a data processing agreement. This agreement is attached to this contract as Annex AVV and applies directly to all services rendered in connection with the „Individual Contract“. The respective Annexes A1 and A2 to Annex AVV are referenced from the respective „Individual Contract“.

2) Technical requirements for remote maintenance

A prerequisite for the rendering of rectification work is access for BASIS to the network of the Client, via which the connection to a remote desktop environment to be provided by the Client is established by means of a suitable system such as Teamviewer. The remote desktop environment must be set up by the Client in such a way that BASIS is enabled to use the „Device“ and that a bidirectional exchange of data is made possible for the rendering of support.

3) Deviating provisions

If the Client does not permit the rendering of services by remote access, additional costs may arise.

Time delays and/or delayed measures for the elimination of faults that result from deviations from the aforementioned provisions or from the absence of remote maintenance are borne by the Client.

§ 3 Content of the specific service, „Changes“

1) The specific services of BASIS are documented in the respective „Individual Contract“. The subject matter is exclusively the IT systems designated in the „Individual Contract“ in accordance with the functional description and the documentation.

2) A „Change“ to an „Individual Contract“ becomes subject matter of the contract only by an express declaration of BASIS made at least in text form and is to be remunerated in accordance with the agreed price list.

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§ 4 Place of performance and term

The place of performance, deadlines, dates and terms result from the respective „Individual Contract“.

§ 5 Obligations to cooperate

1) In general, the following obligations to cooperate and to provide resources apply to the performance of individual contracts:

The Client must create the organisational and personnel conditions necessary for the acts of cooperation and will in particular

- name in writing, for the term of the contract, a responsible person who holds all powers of decision and authorisations required for the purposes of the performance of this agreement;
- support BASIS to the best of its ability, within the scope of its possibilities, in the search for the cause of a malfunction and, if necessary, instruct its employees to cooperate with the „employees“ deployed by BASIS;
- create the technical installation requirements of the „System Environment“ and maintain them for the term of the contract;
- grant the „employees“ commissioned by BASIS for the performance of the support remote access to the „Devices“.

2) Insofar as it is apparent to BASIS that the Client is not performing an act of cooperation incumbent upon it in accordance with the contract, BASIS will notify the Client of this and point out the consequences. BASIS is not in default as long as the Client does not fulfil an obligation to cooperate incumbent upon it in accordance with the contract. In all other respects the statutory provisions apply.

3) Further obligations to cooperate result from the respective „Individual Contract“.

§ 6 Remuneration; rights of retention of the Client; set-off

1) The amount of the remuneration and the reimbursement of other expenses (incidental costs, expenses etc.) are governed by the respective „Individual Contract“. All payment modalities such as partial payments, rebates, cash discounts etc. are governed by the individual contract. The same applies to travel costs and expenses.

2) All prices are net prices and are payable plus value added tax at the rate applicable in each case.

3) The exercise of a right of retention that is not based on a right arising from the contractual relationship of the respective „Individual Contract“ is excluded.

4) The Client is entitled to exercise a right of retention or to set off only insofar as the underlying counterclaim has been established as final and absolute or is undisputed. Notwithstanding this, the right of the Client to set off is not excluded or limited insofar as the claims set off are based on additional costs of the elimination of defects or of completion.

5) The following applies to purchase contracts only:

a) If the Client does not meet its payment obligations on time, BASIS may assert these against the Client without prejudice to the assertion of further damages as well as damages for default in the amount of the statutory default interest. If the Client does not fulfil its payment obligations despite a reminder setting a reasonable additional period, BASIS is entitled, without prejudice to the rights under sentence 1, to withdraw from the „Individual Contract“ concerned, to assert the retention of title to the

„Device“ and to invoice the Client for all costs incurred up to that point.

b) The risk of accidental loss passes to the Client upon delivery or provision of the „Device“ to the Client. In the case of the dispatch of goods, the risk passes to the Client upon handover of the item to the forwarding agent, the carrier or another messenger selected by BASIS at its reasonable discretion. If, in the course of the installation of „Devices“, these are handed over to the Client for the purpose of safekeeping at its premises, the risk of accidental loss with regard to these goods passes to the Client already upon their handover.

§ 7 Terms of payment

1) Payments of the Client are to be made upon receipt and within two weeks of receipt of a verifiable invoice and must be made in favour of BASIS to one of the accounts stated in the invoice.

2) The Client must specify in its payments which debt it is paying. If it fails to do so, incoming payments are credited first against existing ancillary claims (interest etc.) and then against the oldest debt of the Client in each case.

§ 8 Retention of title, reservation of the transfer of the rights of use in the OEM Software

The following applies to purchase contracts only:

1) The hardware of the „Devices“ remains subject to retention of title until full payment of the payment claim resulting from the respective „Individual Contract“. The claim covers in each case the sales value of the „Devices“ as well as, insofar as the corresponding services have been agreed, also the value of the work commissioned by the Client in addition.

2) If the „Device“ is resold to a third party, the Client assigns the corresponding purchase price claim against the third party to BASIS. However, the claim secured in each case covers no more than 110% of the outstanding claim of BASIS relating to the value of the goods of the Device.

3) „OEM Software“: until full payment of the claim arising from the „Individual Contract“, the Client receives only a right of use limited in time in the „OEM Software“ supplied. The rights of use unlimited in time are transferred upon full and final payment of the claim. Until that point in time BASIS may revoke the rights of use limited in time at any time by terminating the „Individual Contract“.

§ 9 Rights of use in the „OEM Software“

The content and the scope of the rights of use to be transferred in the „OEM Software“ that is installed on the Devices are governed by the respective „Individual Contract“. In the absence of such a provision the following applies: with the Device the Client receives the right to install the „OEM Software“ in the number of the Devices sold and to load it into the main memory exclusively on those Devices. Further rights of use are not transferred. The rights of use are transferred irrevocably, unlimited in time and worldwide, subject to § 8 para. 3.

§ 10 Warranty for defects of quality and of title, other disruptions of performance, limitation

1) The Client must examine the „Devices“ for material defects and for completeness without delay after delivery or installation and must notify BASIS of any complaints.

2) In the event of the existence of defects, BASIS initially has the right to make a reasonable number of attempts at rectification

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within a reasonable period. After the failure of subsequent performance the Client is in principle entitled, at its option, to reduce the purchase price, to withdraw from the contract and/or to demand damages. In the case of immaterial defects the right to withdraw or to assert claims for damages is excluded. The right to assert a reduction remains unaffected.

3) The warranty period is 12 months from delivery of the „Devices“. In the event of the installation of the „Devices“ by BASIS, this period begins upon the installation. This also applies to claims for damages, unless the damage was caused intentionally or by gross negligence, and/or the damage caused an injury to body, life or health and/or the damage at the same time constitutes the breach of a guarantee. Claims under the Product Liability Act remain unaffected. Claims arising from a breach of obligations of rectification likewise become time-barred from the point in time of the handover or of the installation.

4) Insofar as the Client carries out a „technical Change“ and, for example, does not comply with the instructions for the required „System Environment“ contained in the service description or the device itself is modified and a „Malfunction“ occurs as a result, the Client must prove that the malfunction is caused by a defect.

§ 11 Liability

1) The liability for damage that was caused as a result of simple, slight negligence is limited in amount to the extent of the risk that existed at the point in time at which the respective „Individual Contract“ was entered into and that was foreseeable for BASIS or would have had to be foreseeable without the application of simple negligence.

2) Claims for damages become time-barred from the point in time at which the Client knew of the damage or would have had to know of it without the application of gross negligence. These limitation periods do not apply in the cases in which the damage was caused intentionally or by gross negligence, and/or the damage caused an injury to body, life or health and/or in the cases in which the damaging event at the same time constitutes the breach of a guarantee. Claims under the Product Liability Act remain unaffected.

§ 12 Force majeure

If BASIS is prevented from the fulfilment of its obligations by the occurrence of unforeseeable, exceptional circumstances that it cannot avert despite the care that can reasonably be expected of it, for example

- interventions by malware, be it on the systems of the Client or on the systems of BASIS,
- operational disruptions for which BASIS is not responsible,
- interventions by public authorities,
- difficulties in the energy supply,

be it that these circumstances occur in the sphere of BASIS or in the sphere of its suppliers, the delivery period is extended to a reasonable extent, but by no more than the period of two weeks, provided that the delivery or the service does not become impossible. If a service is still excluded after expiry of the aforementioned period because of the same uninterruptedly continuing event of force majeure, that service is deemed to be impossible.

§ 13 Subcontractors

1) BASIS has the possibility to hand over to the Client a list that names the subcontractors with which BASIS cooperates on a permanent basis. The Client has the possibility to refuse consent to the commissioning of individual subcontractors by BASIS. The refusal may not be made without fair reason. BASIS is liable for the fault of the subcontractor engaged as for its own fault and is responsible for compliance with the provisions of data protection law and of IT security law.

2) Under the GDPR, BASIS is under an obligation to disclose the subcontractors. Upon conclusion of an „Individual Contract“ the Client undertakes, for the term of that contract and for a period of 12 months beyond it, to refrain from concluding a contract with the subcontractor named in each case on the rendering of services that are the subject matter of the contract, subject to a contractual penalty payable for each case of infringement, the amount of which is to be determined in the individual case by BASIS and which is reviewable as to its amount by the competent regional court at the instigation of the Client, in any case not less than 5,000.00 Euro and not more than 25,000.00 EURO.

§ 14 Data protection

1) The agreements of the „Contracting Parties“ on data protection are governed separately in Annex AVV, which together with its annexes is referenced via the respective „Individual Contract“.

2) The conclusion of this agreement is obligatory if the performance of an „Individual Contract“ results in a processing of personal data of third persons, which is the case in particular if employees of the Client use the ticket system of BASIS.

§ 15 General provisions

1) Should a provision of these contractual provisions or of the respective supplementary agreements to these provisions be or become invalid, the validity of the remaining provisions is not affected thereby.

2) The Client may assign rights and claims arising from the „Individual Contract“ to third parties only with the prior written consent of BASIS. BASIS is entitled to assign rights and obligations arising from the „Individual Contract“ in their entirety or individual services to affiliated companies within the meaning of § 15 AktG (German Stock Corporation Act).

3) With regard to all legal relationships arising from this contractual relationship, the „Contracting Parties“ agree on the application of the law of the Federal Republic of Germany.

4) Insofar as the Client is a merchant within the meaning of the German Commercial Code, a legal person under public law or a special fund under public law, the registered office of BASIS is agreed as the place of jurisdiction for all disputes that arise in the course of the performance of this contractual relationship. Notwithstanding this, BASIS is also entitled to bring an action before the court that has jurisdiction for the registered office of the Client.

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Part II – Release and Support

§ 1 Support services

1) BASIS offers its customers various types of service contracts. Details result from the respective „Individual Contract“. During the term of the contract of the Full Coverage the Client is entitled to telephone support and to the support by e-mail by BASIS within the scope of the 1st level support upon the occurrence of „Malfunctions“.

2) The telephone support can be reached within the regulated times in accordance with the respective „Individual Contract“ if a „Malfunction“ exists. BASIS endeavours to help the customer in the event of the occurrence of a „technical fault“. The costs for making use of the services of BASIS are determined in accordance with the respective „Individual Contract“. Insofar as the „Malfunction“ is a defect of the „Device“ that occurs within the warranty for the respective device, BASIS renders rectification.

3) The commitments for the fault response times named in the „Individual Contract“ do not constitute independent guarantees.

§ 2 Fault response within defined times

1) Insofar as agreed, the response times named in the „Individual Contract“ apply. In the event that a „defect“ has caused the malfunction, the statutory provisions apply.

2) In accordance with the respective „Individual Contract“ the parties may agree that BASIS makes a replacement device available to the Client within the period of time named in the „Individual Contract“. This device is a new device or a fully refurbished „Device“. The exchange does not entail an extension of the warranty claims arising from the „Individual Contract“ by means of which the customer acquired the „Device“ to be exchanged. The exchange of the devices is to be qualified as a swap.

1) End of life: the „OEM Software“ created by BASIS has existed for several years. It is not possible to keep every older version of this „OEM Software“ within the support services that the Client pays for with the flat fee. Support services are rendered only for „Releases“ of the „OEM Software“ whose „Delivery“ dates back no more than 12 months. Should the Client wish, after expiry of this period, to use „OEM Software“ that is older, the support for these „Releases“ is no longer covered by the flat fee of the respective „Individual Contract“, but is to be commissioned separately as a „Change“ in accordance with § 3 of this agreement and to be remunerated in accordance with the price list of BASIS then applicable.

§ 3 „Release“

2) BASIS will adapt the „OEM Software“ during the term of the contract to the proven state of the art of the required system environment in each case. BASIS may determine at its reasonable discretion whether the adaptations can also be rendered by changes of program parameters.

3) Further adaptations to requirements of use that result from individual requirements of the Client are not part of the service owed. BASIS will examine suggestions for possible further developments seriously. However, there is no claim to the realisation or implementation of these suggestions.

4) Release notes: the required „System Environment“ is described in the respective „Release Notes“. Insofar as the operation of the „Device“ changes, the „Release Notes“ also contain instructions

on the changed operation of the „Device“.

5) End of life: the „OEM Software“ created by BASIS has existed for several years. It is not possible to create compatible „Releases“ for every older version of this „OEM Software“. New „Releases“ are supplied only for „Releases“ of the „OEM Software“ whose „Delivery“ dates back no more than 24 months.

6) Should the Client wish, after expiry of this period, that BASIS create „OEM Software“ that is compatible with the version of the „Release“ of the „OEM Software“ used by the Client, this service is to be commissioned separately as a „Change“ in accordance with § 3 of this agreement and to be remunerated in accordance with the price list of BASIS then applicable.

§ 4 Services not covered by the flat fee pursuant to Annex PL (item 4).

1) Only if a separate order exists will BASIS render in particular the following services for the Client:

- Setting up of new users
- Adaptation and optimisation of the routing
- Product version downgrades
- SLA and priority management
- Exchange of devices
- Introduction to new functions
- Instruction of new employees
- Creation of reports
- Work on the system environment
- Further configuration support

2) The additional services are remunerated in accordance with the price list agreed in each case for work and services (Annex PL).

§ 5 Warranty for the „Releases“ of the „OEM Software“

1) BASIS initially has the right of rectification. The right to withdraw or to assert damages does not exist insofar as the functionality of the „Software“ is not materially impaired.

2) Technical Change: insofar as the Client carries out a „technical Change“ and, for example, does not comply with the instructions for the required „System Environment“ contained in the service description or the device itself is modified and a „Malfunction“ occurs as a result, the Client must prove that the malfunction is caused by a defect.

3) Warranty claims become time-barred twelve months from the acceptance by the Client. This does not apply in the cases in which a defect of the releases that occurs has caused damage to body, life and health and/or if the guaranteeing event at the same time constitutes the breach of a guarantee and/or in the cases in which the damage is caused intentionally or by gross negligence. Claims under the Product Liability Act remain unaffected.

§ 6 Obligations to cooperate

The obligations to cooperate are governed by the respective particulars of the „Individual Contract“.

§ 7 Contract duration and options of termination

The terms and the options of ordinary termination of an „Individual Contract“ are described in that contract itself. The right of extraordinary termination remains unaffected.