

# Check list for the SaaS contract

# Check list for the contract negotiation

This check list is intended for simpler cases of SaaS contract negotiations. If it is not adequate for your purposes, a comprehensive checklist is available for download at <http://saas.clusterwien.at/5560585.0>

It makes most sense for both contractual parties to use the checklist together as the basis for negotiation talks. As these talks can often last for several days, the individual points that

have been successfully finalised should be ticked and dated. The results on each point must be recorded in writing in an essential accompanying report. The accompanying report and the questionnaire shall be signed by both parties and will be used as evidence and an appendix to the SaaS contract. This increases the chances that the key sticking points will be clarified before the contract is concluded and implemented.

Information marked in red can be found in the guideline “Software as a Service – Concluding contracts correctly” (🔗 SAAS GUIDE).

No.	Description	🔗 SaaS Guide	☑	Date
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## Performance and remuneration

### 1.1 Subject of the contract

1	Are the key properties of the software/hardware to be used known (functions, memory capacity, user numbers, transaction volume, response time behaviour etc.)?	→ 1.2.1 → 1.2.3 → 1.2.12 → 4.1	<input type="checkbox"/>	
2	Definitions clarified and specified (glossary and list of abbreviations)?	→ 1.2.2	<input type="checkbox"/>	

### 1.2 Provision, operation and support

3	When can test operation and live operation be started?	→ 1.2.3 → 1.2.9	<input type="checkbox"/>	
4	How are existing data transferred at the start of operation (media, formats, structures)?		<input type="checkbox"/>	
5	Can operating times and requirements be achieved?	→ 1.2.3	<input type="checkbox"/>	

### 1.3 Availability of overall service

6	What availability can the supplier pledge for its services and for what assessment period and at what cost?	→ 1.2.12 → 3.2 → 3.3	<input type="checkbox"/>	
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### 1.4 Customer-specific developments

7	What further supplements/enhancements are already planned?	→ 1.2.7 → 1.2.8	<input type="checkbox"/>	
8	If supplements/enhancements are mandatory, to what extent is the supplier prepared to grant the customer a right of termination?	→ 1.2.7 → 1.2.14	<input type="checkbox"/>	

### 1.5 Data protection and data backup

9	What is the data backup like?	→ 1.2.5	<input type="checkbox"/>	
10	How is data protection ensured and how is the Data Protection Act implemented?	→ 1.2.5 → 1.2.18	<input type="checkbox"/>	
11	What is access to the data backups like (also in relation to necessary changes or deletions, § 27 DSGVO [Data Protection Act] 2000)	→ 2.1.4	<input type="checkbox"/>	

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<b>1.6 System requirements for the customer</b>				
12	What system requirements (hardware and software) are needed from the customer?	→ 1.2.6	<input type="checkbox"/>	
13	What update cycles are absolutely necessary for hardware and software?	→ 1.2.7	<input type="checkbox"/>	
14	What network requirements (bandwidth, router, protocols, network addresses) are expected and can be achieved?	→ 2.1.8	<input type="checkbox"/>	
15	Who is responsible for the network on the customer's premises?	→ 3.3	<input type="checkbox"/>	
<b>1.7 Training and support</b>				
16	What training can the supplier offer/carry out? What content will be covered and how many people can be trained?	→ 1.2.11	<input type="checkbox"/>	
17	What requirements must staff meet before they are trained?	→ 1.2.11	<input type="checkbox"/>	
18	Costs and time for training (per person and module)?	→ 1.2.11 → 1.2.13	<input type="checkbox"/>	
<b>1.8 Remuneration and payment conditions</b>				
19	How will the supplier's services be invoiced (individually, at a flat rate, according to time or according to use of components)?	→ 1.2.13	<input type="checkbox"/>	
<b>1.9 Term and cancellation</b>				
20	What contract term is the supplier aiming to achieve (unlimited, limited, waiver of entitlement to termination for one or both parties)?	→ 1.2.14	<input type="checkbox"/>	
21	What regulations (data transfer and deletion etc.) are provided for the end of the contract?	→ 1.2.14 → 2.3.1	<input type="checkbox"/>	
22	How and in what period of time can the supplier reliably conduct and document the deletion of backups after the end of the contract?	→ 1.2.14	<input type="checkbox"/>	
<b>1.10 Warranty</b>				
23	To what extent is the supplier prepared to undertake the statutory warranty for its services (as per §§ 922-933 and §§ 1096-1097 ABGB [General Civil Code])?	→ 1.2.19	<input type="checkbox"/>	
24	What deadlines are agreed for the reporting of deficiencies?	→ 1.2.19	<input type="checkbox"/>	
<b>1.11 Compensation</b>				
25	To what extent are the supplier and the customer prepared to be liable even for slight negligence?	→ 1.2.20	<input type="checkbox"/>	
26	How will the settlement be carried out between the parties in relation to claims for compensation from third parties (infringement of third party rights by one of the parties)?	→ 1.2.20	<input type="checkbox"/>	
<b>1.12 Exemption from performance and force majeure</b>				
27	What events are seen as force majeure and what other external influences will be included as reasons for exemption from performance?	→ 1.2.21	<input type="checkbox"/>	
<b>1.13 Company transfer</b>				
28	Which companies are at least currently not acceptable for the customer/supplier if they conduct a friendly or hostile takeover of the supplier/customer or a merger is imminent between them and the supplier/customer or they are able to exert a significant influence over the supplier/customer?	→ 1.2.22	<input type="checkbox"/>	
<b>1.14 Bankruptcy</b>				
29	What precautions have been implemented so that the customer will have access to its data if the supplier goes bankrupt?	→ 1.4	<input type="checkbox"/>	
30	Is a backup of the customer's data and the software used by the supplier outside of the supplier's domain possible and at what cost?	→ 1.4	<input type="checkbox"/>	

No.	Description	 SaaS Guide	<input checked="" type="checkbox"/>	Date
31	Is an alternative supplier conceivable in the event of bankruptcy and can the supplier name a supplier who is authorised as per insolvency law?	→ 1.4	<input type="checkbox"/>	
<b>1.15 Compliance</b>				
32	Does the supplier comply with the Austrian Corporate Governance rules?	→ 1.5	<input type="checkbox"/>	
33	If the customer has to comply with the Sarbanes-Oxley Act (USA, SOX), is the supplier prepared for this and does it consent to US-certified specialists inspecting its services for conformity with the SOX?	→ 1.5	<input type="checkbox"/>	

## Datenschutz- und Datensicherheit

### 2.1 Technical security

#### 2.1.1 Redundant memory networks

34	Which redundancy concepts are applied or available?	→ 2.1.1	<input type="checkbox"/>	
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#### 2.1.2 Up-to-date information

35	How often is a data backup created (time interval/type)?	→ 2.1.2	<input type="checkbox"/>	
36	Where is the backup data and is it physically secure?		<input type="checkbox"/>	

#### 2.1.3 Data recovery

37	How is data recovered following loss or damage?	→ 2.1.3	<input type="checkbox"/>	
38	What time span has to be planned in for this?	→ 2.1.3	<input type="checkbox"/>	
39	Is differentiation according to databases possible?	→ 2.1.3	<input type="checkbox"/>	
40	Are data recovery tests also carried out and at what intervals?		<input type="checkbox"/>	

#### 2.1.4 Protection against malware

41	What safeguards does the supplier use against malware and which should the customer use?	→ 2.1.7	<input type="checkbox"/>	
42	How often are these protection programs updated or should they be updated?	→ 2.1.7	<input type="checkbox"/>	

### 2.2 Organisational security


#### 2.2.1 Protection against access by unauthorised persons

43	What password security methods are proposed for the employees of the customer or the supplier?	→ 2.2.1	<input type="checkbox"/>	
44	Do the databases allow differentiated access protection for data and datasets and for the programmes that are used?	→ 2.2.1	<input type="checkbox"/>	

### 2.3 General

#### 2.3.1 Data availability when the software service is not available

45	Can the supplier provide an export function which makes the customer's data available so that it can also be read and processed by other programs?	→ 2.3.1	<input type="checkbox"/>	
46	Do these programs already have to be specifically named now?	→ 2.3.1	<input type="checkbox"/>	
47	How often and in what way can the supplier legally provide the customer with its data so that even an executive intervention in relation to the supplier will not prevent the customer from accessing its data?	→ 2.3.1	<input type="checkbox"/>	
48	How can the supplier ensure that the programs it uses will be available for the customer to use legally in the event of executive access to the supplier?	→ 2.3.1	<input type="checkbox"/>	

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<b>2.3.2 Erasure of data</b>				
49	Is it possible for individual pieces of data/entire datasets to be deleted on the request of the person in question and/or as a result of statutory requirements in all backups (§ 6(1)(5) DSG 2000)?	→ 2.3.2	<input type="checkbox"/>	
50	Is it possible for datasets to be blocked for certain periods in the databases (§ 26(7) DSG 2000)?	→ 2.3.2	<input type="checkbox"/>	
<b>2.3.3 Data protection</b>				
51	Are the supplier and its employees familiar with the Data Protection Act?	→ 2.3.3	<input type="checkbox"/>	
52	Have its employees received corresponding instructions and have they signed declarations? Can these be inspected?	→ 2.3.3	<input type="checkbox"/>	
53	Have the databases provided to the customer been designed so that they can meet the requirements of §§ 6, 7, 9, 14 and 26 DSG 2000?	→ 2.3.2 → 2.3.3	<input type="checkbox"/>	
54	Is the supplier prepared to allow the data protection commission or experts which it commissions to carry out the investigations required by law on its premises at any time?	→ 2.3.3	<input type="checkbox"/>	

## System reliability

<b>3.1 Clarification from the supplier</b>				
55	Is the supplier prepared to comprehensibly present and explain the matter of system reliability before the contract is concluded?	→ 3.1	<input type="checkbox"/>	
<b>3.2 Agreement of the permitted downtimes</b>				
56	Has the customer given notification of its desired operating hours? Has it fully defined the percentage availabilities for all departments?	→ 3.2	<input type="checkbox"/>	
57	Have the corresponding measurement periods also been proposed?	→ 3.2	<input type="checkbox"/>	
<b>3.3 Specifying the methods for ascertaining failures</b>				
58	Have various failure scenarios been investigated and substantiated?	→ 3.3	<input type="checkbox"/>	
59	How are failures identified?	→ 3.3	<input type="checkbox"/>	
60	Have the responsibilities for this been clarified?	→ 3.3	<input type="checkbox"/>	
61	Have any possible external service providers also been included in this and have they been assigned acceptance of responsibilities?	→ 3.3	<input type="checkbox"/>	
<b>3.4 Defined follow-up actions</b>				
62	Have the reactions to an error notification from the customer been discussed and the measurement methods and organisational units for remedying by the supplier been defined? How does escalation work?	→ 3.4	<input type="checkbox"/>	
63	Have the mutual obligations to recover the contractual state been agreed?	→ 3.4	<input type="checkbox"/>	