

# Supplementary Terms and Conditions for Hardware and Software Maintenance.

## 1. General.

Our General Terms and Conditions for deliveries and services apply. Where the Parties agree to the provision of hardware and/or software maintenance services, the following supplementary contractual conditions shall apply in addition.

## 2. Object of the Agreement.

The object of the agreement is the hardware and/or standard software specified in the support agreement.

## 3. Our Services, General Provisions.

- 3.1. We may make maintenance services conditional upon initial and regular subsequent maintenance checks. Unless otherwise contractually agreed, we shall determine the dates for such maintenance checks at annual intervals at our reasonable discretion.
- 3.2. Unless specific time allocations or fixed dates have been agreed, the agreed time quota shall be allocated at our reasonable discretion.
- 3.3. Where the recovery of data in the event of data loss, for example due to a system failure, forms part of our services, such recovery is limited to data that has been duly backed up by Customer.

## 4. Software Maintenance.

- 4.1. The following provisions shall apply to the maintenance of third-party standard software unless otherwise agreed in the support agreement.
- 4.2. Software maintenance applies only to the current version of the software and is conditional upon the installation of all new program versions delivered as part of the maintenance service, in particular patches and updates. If this is not the case, we will carry out the necessary updates subject to a separate agreement.
- 4.3. Where Customer's rights of use in respect of software are contractually extended, for example by an increase in the number of licences, maintenance shall also be extended accordingly.
- 4.4. Unless otherwise agreed, we are not obliged, but are entitled, to provide maintenance services in the following situations:
  - 4.4.1. following modifications by Customer to the source code or object code of the software, unless Customer demonstrates and proves, in the event of a dispute, that such modifications do not affect the maintenance services;
  - 4.4.2. delivery of new software modules;
  - 4.4.3. delivery of software offered by the manufacturer separately and outside the scope of the standard maintenance agreed with us or generally available;
  - 4.4.4. installation of new program versions;
  - 4.4.5. on-site support;
  - 4.4.6. maintenance services relating to outdated versions of the software;
  - 4.4.7. maintenance services relating to the use of the software on different hardware systems, at a different location or under a different operating system than those in place at the time of initial installation, or than those specified by the manufacturer in its requirements for hardware, operating environment and operating prerequisites, or in the support agreement;
  - 4.4.8. maintenance services relating to the interaction between the contractual software and other software or hardware not covered by the support agreement. This also applies insofar as such interaction is influenced or impaired by our maintenance services.
- 4.5. Where specific response times are agreed, performance of the agreed service shall commence within the agreed period, provided that Customer has created the necessary prerequisites.

## 5. Hardware Maintenance.

- 5.1. The restoration of the functional capability of hardware covered by the agreement, in particular in the event of defects, may be effected by us through commissioning the manufacturer or our suppliers.
- 5.2. The restoration of the functional capability of hardware covered by the agreement shall, at our reasonable discretion, be carried out either by complete replacement or by repair (using spare parts where necessary). Replacement devices or spare parts are always new items unless the delivery of used parts has been agreed. The delivery of replacement devices or spare parts is subject to our Ge-

neral Terms and Conditions for deliveries and services. The replacement device or spare part assumes the property-law status of the replaced device or part (in the case of purchased items: ownership of Customer or continuation of any retention of title). In the case of purchased items, we are entitled to acquire ownership of replaced devices or parts. Customer hereby gives its advance consent to such acquisition. Customer is obliged to inform us without undue delay if any circumstances prevent the acquisition of unencumbered ownership of the replaced device or part, in particular in the case of a transfer by way of security or attachment by third parties.

- 5.3. We are entitled to make the delivery of hardware, in particular in the case of complete replacement, or of spare parts conditional upon receipt of a written order, provided Customer has no entitlement to subsequent performance due to material defects.
- 5.4. Where a recovery time has been agreed, Customer is entitled to replacement devices if such recovery time is exceeded.
  - 5.4.1. The replacement devices selected at our reasonable discretion shall ensure the essential functions of the hardware covered by the agreement.
  - 5.4.2. No entitlement exists to specific devices, devices from specific manufacturers, or devices of a particular specification.
  - 5.4.3. The recovery time does not apply and any entitlement to replacement devices is excluded where the repair has become necessary or has been delayed due to external influences (heat, fire, water, moisture, mechanical impact), gross improper handling by Customer, or a breach of Customer's cooperation duties or obligations. Where performance of our services is delayed due to circumstances for which Customer is responsible, the recovery time shall be extended accordingly. An entitlement to replacement devices is also excluded where the service life of the hardware has been significantly exceeded.
  - 5.5. Where we maintain a pool of replacement devices for Customer, the following provisions apply unless otherwise agreed:
    - 5.5.1. Pool devices are used devices (with the exception of the new devices referred to in Section 5.5.4) and are our sole property.
    - 5.5.2. Our obligation to provide replacement devices is limited to the devices available in the pool.
    - 5.5.3. By way of deviation from Letter N) No. 2 of our General Terms and Conditions for deliveries and services, Customer is entitled to claims for material defects of the replacement device to the same extent as those to which Customer was entitled in respect of the replaced device.
    - 5.5.4. Replaced devices are repaired or replaced with new devices by us as part of subsequent performance. Where Customer is not entitled to any claims for defects in respect of the replaced device, or where such claims are time-barred, we shall submit an offer including a cost estimate for the repair and/or a new device to be included in the pool in place of the replaced device. Instead of including new devices in the pool, we may deliver such devices to Customer and exchange them for a corresponding device of Customer. For replacement devices and replaced devices, Section 5.2, Sentences 4 to 7 apply.
    - 5.5.5. If the pool is exhausted, we shall inform Customer. The Parties may agree to expand the pool or to procure a replacement device.
    - 5.5.6. Upon termination of the pool agreement, devices that have been added to the pool as new devices pursuant to Section 5.5.4 shall, following full payment, be handed over to Customer and ownership shall be transferred to Customer. All other pool devices remain our property and in our possession without compensation and are, where applicable, to be disposed of at our expense, unless Customer declares in writing within two (2) weeks of a corresponding request that it wishes to acquire such devices at their fair market value, in which case Customer's reasonable expenses for repairs pursuant to Section 5.5.4 shall be deducted accordingly.
  - 5.6. Hardware maintenance does not include:
    - 5.6.1. maintenance services relating to the interaction between the hardware covered by the agreement and other software or other hardware that is not the subject of the support agreement; this also applies insofar as such interaction is influenced or impaired by our maintenance services;
    - 5.6.2. maintenance services that become necessary due to the use of the hardware in an operating environment or with software other than those specified in the support agreement or in the manufacturer's information regarding requirements for hardware, operating environment and operating prerequisites;
    - 5.6.3. the procurement or installation of software, unless otherwise agreed.

## 6. Incident Reporting (Hotline).

- 6.1. Where we have undertaken to provide an incident reporting hotline, the following provisions apply unless otherwise agreed in the support agreement.
- 6.2. The incident reporting hotline is intended exclusively for support requests that cannot be resolved by Customer using its own means and may be used only by Customer's employees who are trained and familiar with the contractual software or hardware.
- 6.3. The hotline is staffed on working days from 08:00 to 17:00, based on local time at our registered office in Germany; where public holidays other than nationwide public holidays are concerned, the public holidays applicable at our registered office are decisive. Extended service hours may be agreed in the support agreement. Continuous availability is not owed; in particular, waiting times must be expected where lines are busy.
- 6.4. By special agreement, support requests may also be submitted in text form, provided the request is not urgent.

## 7. Customer's Cooperation Duties and Obligations.

- 7.1. Customer shall ensure that the legal and technical prerequisites for operating the hardware or using the software, as well as for the maintenance services to be provided by us, are in place, unless we have contractually assumed responsibility for creating or maintaining such prerequisites. The same applies to compliance with data-protection requirements.
- 7.2. Customer shall ensure that the hardware covered by the agreement is used only under the conditions of use permitted in the support agreement or specified by the manufacturer, in particular with suitable accessories and consumables.
- 7.3. Customer shall ensure that the software covered by the agreement is always kept up to date and that all new program versions are installed in accordance with the manufacturer's specifications, unless we have contractually assumed this responsibility.
- 7.4. Customer shall provide the required storage capacity for any software tools used.
- 7.5. Where necessary, other work involving the network or the affected hardware or software must be suspended during the performance of maintenance services.
- 7.6. Customer shall ensure that trained employees who are familiar with the software are available on site to support our service employees and, in accordance with their instructions, to carry out maintenance and troubleshooting measures themselves. Customer's designated employees must be authorised to represent Customer when placing orders with us that are not covered by the maintenance services.
- 7.7. For all support requests, Customer shall describe the problem in as much detail as possible and in a manner that allows the issue to be reproduced. Where applicable, tools provided by us, such as checklists, must be used.
- 7.8. In the case of on-site services, all hardware and software products affected by the service must be made accessible to our employee in such a way that work can commence immediately; in particular, cabling and attachments must be removed and concealed connections exposed.
- 7.9. Unless otherwise agreed, Customer shall ensure regular data backups of all data, at least on a daily basis.
- 7.10. Where we provide maintenance services, such as diagnostics or troubleshooting, in whole or in part by means of remote access, Customer shall establish the necessary and reasonable facilities, in particular connections enabling access to Customer's network, and shall provide suitable personnel.
- 7.11. All items owned by us that are made available to Customer, in particular replacement devices, tools and resources used for service purposes such as diagnostic software, data carriers, test equipment, maintenance plans, manuals and software documentation, must be stored with due care by Customer and handed over to us upon request. Such tools and resources must be stored in a manner that ensures our access at any time in the event of a service case. Customer shall store all items owned by us separately from its own property and label them in such a way that our ownership is readily identifiable by third parties. These items must be kept inaccessible to third parties. We are entitled to verify compliance with these provisions at Customer's premises.
- 7.12. Where we contractually engage third parties, in particular suppliers or manufacturers, for the provision of services, Customer's cooperation duties and obligations are governed by the contractual or ge-

neral terms and conditions of such third parties. This does not apply where this would be unreasonable for Customer or where the third party's terms and conditions conflict with individual agreements between us and Customer. With regard to cooperation duties and obligations, the contractual or general terms and conditions of the third party take precedence over the foregoing provisions.

## 8. Rights of use.

- 8.1. Letter E) of our General Terms and Conditions for deliveries and services also applies to deliveries and services provided in connection with maintenance, in particular to all new program versions made available.
- 8.2. Unless otherwise provided in the terms of use applicable pursuant to Section 8.1, Customer's right to use a version of the software expires upon delivery of a new version. Any data carriers containing outdated versions must be returned to us, and all outdated versions stored on Customer's systems must be deleted.

## 9. Remuneration.

- 9.1. The remuneration for maintenance services is governed by the support agreement and is payable in advance for the agreed period.
- 9.2. No reimbursement is granted for unused services, unless Customer is entitled to such reimbursement under these terms or applicable law.
- 9.3. Unless otherwise agreed, our list prices, or failing that our usual prices, apply to maintenance checks.
- 9.4. Services that are not owed as maintenance services, but which we are entitled to provide or which are commissioned by Customer, are to be remunerated additionally at the agreed rates, or failing that at our usual rates.
- 9.5. Where the services to be provided under the support Agreement are extended during the term of the support agreement, for example by an extension of Customer's rights of use in respect of software or by the addition of further hardware or software to the maintenance services, the remuneration shall be adjusted accordingly. Unless otherwise agreed, our prices valid at the time of the extension apply to such extensions.
- 9.6. The remuneration covers labour only. Spare parts, materials (for example cables, connectors, storage media, consumables such as paper, toner and print heads), accessories and other deliveries are supplied for separate remuneration at our list prices, or failing that at our usual prices, unless otherwise agreed. Where it is agreed that spare parts are supplied without charge, an upper limit must be defined. If the upper limit, calculated on the basis of our usual prices, is exceeded, the preceding Sentence 2 applies.
- 9.7. Expenses, in particular travel and accommodation costs of our employees or third-party service providers, as well as expenses for necessary chargeable services of manufacturers or suppliers, in particular chargeable enquiries, patches and other software, including their delivery, installation and any training provided by us, are to be reimbursed against evidence, or failing that at our usual rates. Where it is agreed that travel expenses are not charged, an upper limit must be defined. If the upper limit, calculated on the basis of our usual rates, is exceeded, the preceding Sentence 1 applies.
- 9.8. In all other respects, Letter F) of our General Terms and Conditions for deliveries and services applies.

## 10. Term.

- 10.1. The term of the support agreement is determined by the support agreement. Unless otherwise agreed, the agreement renews for successive periods of one (1) year unless terminated by giving three (3) months' notice to the end of the month in which the respective contract year ends.
- 10.2. The right to terminate the agreement without notice for good cause remains unaffected. Good cause for us exists in particular if:
  - 10.2.1. Customer is in default, in whole or in part, with a payment for more than 30 days;
  - 10.2.2. Customer breaches the provisions governing rights of use;
  - 10.2.3. Customer files an application for the opening of insolvency proceedings, insolvency proceedings are opened, or the opening of such proceedings is refused for lack of assets;
  - 10.2.4. the manufacturer of the hardware or software discontinues maintenance or the supply of parts for the hardware or software covered by the agreement and continuation of the agreement is therefore unreasonable for us.
- 10.3. Notice of termination must be given in writing.