



## 1 Subject matter of the contract

- 1.1 These terms and conditions for software maintenance apply to legal transactions between companies, namely for the maintenance of software previously supplied and licenced by the contractor. Software for the purposes of these terms and conditions are computer programs distributed by the contractor as standard products or individually developed or adapted for the principal within the meaning of [Section 40a of the Austrian Copyright Act](#) (§ 40a URHG) for use on, for the operation or for the control of electrotechnical and/or electronic equipment and systems.
- 1.2 Maintenance for the purposes of these terms and conditions means that the contractor ensures that the software in the licensed version functions as agreed. This includes in particular the installation of fixes, patches and software updates.
- 1.3 The exact scope of the maintenance services, including the versioning of software subject to the maintenance, is to be determined in an individual contract.
- 1.4 Unless otherwise agreed in an individual contract, the maintenance of third-party software is not covered by the contract.
- 1.5 The contractor reserves the right to inform the principal in good time in the event that the software is to be removed from its product portfolio and, if possible, will seek to propose alternatives.

## 2 Conclusion, amendment and interpretation of the contract

- 2.1 In case of doubt, any offers made by the contractor are deemed to be non-binding. The contract is considered concluded when the contractor has confirmed the order in writing after receipt of the principal's order or has performed the first partial delivery.
- 2.2 Subsequent amendments and additions to the contract for software maintenance including these terms and conditions, in particular any amendment to the following formal requirements, its termination and all other unilateral declarations of intent provided for in the contract or these terms and conditions or in connection therewith must be made in writing to be valid. Any provisions deviating from these terms and conditions are deemed to have been agreed in an individual contract if the contractor expressly agrees to them.
- 2.3 Unless otherwise agreed, each party will bear its own costs associated with the drafting, execution and termination of the contract.
- 2.4 For the purposes of interpreting the contract, it is expressly assumed – in the absence of an express agreement to the contrary in individual cases – that the contractor is an independent contractual partner and that the contractor or its owners, partners, employees, consultants or subcontractors are not referred to or regarded as agents, assistants, partners, joint ventures or employees of the principal.

## 3 Obligations of the principal to cooperate

- 3.1 Subject to an individual contractual provision, the principal is responsible for
  - a) doing everything necessary to ensure that the services can be started on time and carried out without interruption;
  - b) carrying out any necessary preparatory work professionally under its own responsibility and providing the contractor with all available documents in good time. These documents remain the property of the principal and may only be used by the contractor or its subcontractors for the purposes of the maintenance services;
  - c) taking the necessary accident prevention measures;
  - d) providing the contractor or its subcontractors with physical access or creating the conditions for this;
  - e) setting up remote access for the contractor to the software being maintained; and
  - f) promptly notifying the contractor of any changes in the operating environment.
- 3.2 If the principal fails to fulfil its obligations, the contractor is entitled to refuse the provision of services and to withdraw from the contract after setting a reasonable deadline. The principal is in any case liable for all damages (e.g. for downtimes etc.) incurred by the contractor through non-compliance with these obligations.

## 4 Charging for services

- 4.1 Unless otherwise agreed, services are charged according to time and effort (reimbursement of expenses). If agreed in writing, charging at a flat rate is also possible. Unless expressly agreed otherwise, the services will be provided during the contractor's normal business hours.
  - 4.2 Services for reimbursement of expenses  
The contractor's services will be invoiced as follows:  
Compensation for personnel: The principal certifies the working time performed by the contractor's personnel by means of working time confirmations.  
The working time begins when the personnel arrive and ends when they leave the client's premises. If the principal fails to confirm this without sufficient reason, the contractor's records are deemed to be the basis for invoicing. The actual working time will be invoiced according to the rates agreed or specified in the offer.  
The contractor itself records the working time for maintenance carried out via remote access.
  - 4.3 Services at flat rate prices  
The flat rate price covers the services to be regularly provided by the contractor as agreed in writing. It is conditional on an unhindered work process and the timely completion of any necessary preliminary work by the principal. Additional costs incurred by the contractor due to circumstances for which it is not responsible, such as subsequent changes to the content or scope of the services, idle times, etc., will be borne by the principal.
  - 4.4 Prices are exclusive of VAT and, unless otherwise agreed, exclusive of other taxes, duties and fees.
- ## 5 Payment
- 5.1 The amount and payment date of the one-off and/or recurring utilisation fee must be agreed in an individual contract, as must any indexation.
  - 5.2 The contractor may send the invoice electronically.
  - 5.3 Unless otherwise agreed in an individual contract, all invoices are due for payment no later than 30 days from the invoice date.
  - 5.4 Payments are to be made net, without any deductions and free of charge to the contractor's payment processor in the agreed currency. Any acceptance of cheques or bills of exchange will only ever be in lieu of payment. All related interest and expenses (such as collection and discount charges) will be borne by the principal.

- 5.5 The principal is not entitled to withhold or offset payments on the basis of warranty claims or other counterclaims. Any rebates, bonuses or other discounts granted are conditional on the principal making full payment on time.
- 5.6 A payment is recognised as having been made on the day on which the contractor can dispose of it.
- 5.7 If the principal is in default with an agreed payment or other performance under this or other legal transactions, the contractor may – unless otherwise agreed in an individual contract – without prejudice to its other rights
  - a) postpone the fulfilment of its own obligations until such payment or other performance has been effected and claim a reasonable extension of the performance period,
  - b) declare all outstanding claims from this or other legal transactions due and payable and charge the statutory default interest plus VAT on these amounts from the respective due date, unless the contractor provides evidence of additional costs,
  - c) in the event of qualified insolvency, i.e. after two payment defaults, fulfil this and other legal transactions only against advance payment.
 The contractor is in any case entitled to charge the principal for pre-litigation costs, in particular reminder fees and lawyer's fees, in accordance with the applicable statutory provisions.

## 6 Warranty and liability for defects

- 6.1 The contractor warrants – provided that the software is used in accordance with the applicable installation requirements and under the applicable conditions of use – that the contractually agreed maintenance service will be carried out properly. Unless otherwise agreed in an individual contract, the individual maintenance services are subject to the statutory warranty period. No warranty claims can be derived nor any liability established from information in catalogues, brochures, advertising material and written or verbal statements not included in the contract.
  - 6.2 Unless otherwise agreed in an individual contract, the statutory warranty period commences at the time the individual maintenance service is completed. The statute of limitations commences immediately at the end of the warranty period.
  - 6.3 Unless otherwise agreed in an individual contract, the burden of proof that the defect already existed at the time of handover is based on the applicable statutory warranty provisions.
  - 6.4 Unless otherwise agreed in an individual contract, the assertion of warranty claims is subject to an immediate inspection of the maintenance performed and an immediate written notification of defects, in which the principal must state the deviation from the specification, the user steps that led to the defect and the error message displayed by the software in detail to the best of his ability.
  - 6.5 Any rectification of defects requires that
    - a) a defect subject to warranty is present, i.e. that there is a reproducible deviation from the agreed specifications that impairs the function of the software; and
    - b) the principal has installed any new versions and updates made available to it free of charge within the warranty period; and
    - c) the contractor receives from the principal all documents and information necessary for the rectification of defects; and
    - d) the contractor is granted access to the hardware and software during its normal working hours.
  - 6.6 In the case of a defect covered by the warranty, the contractor may, at its own discretion, initially improve or replace the software. If this is not possible or involves disproportionate costs and effort, principal and contractor may agree on a reduction in price.
  - 6.7 Unless otherwise agreed in an individual contract, the contractor assumes no warranty
    - a) for third-party software that is not part of the contract; or
    - b) for the compatibility of the software with other software programs in use or planned or modified by the principal; or
    - c) for merely short-term, software-typical interruptions or malfunctions.
  - 6.8 The following leads to an immediate expiry of the warranty
    - a) improper handling by the principal or other authorised users, or
    - b) usage errors by the principal or other authorised users, or
    - c) use of the software by the principal or other authorised users in breach of the licence, or
    - d) use by third parties without the prior written consent of the contractor, or
    - e) modifications to the software made by the principal itself or by third parties without the prior written consent of the contractor, or
    - f) modifications to the hardware or hardware configuration originally defined for the software installation by the principal or third parties.
  - 6.9 Should the software fail to comply with the specifications agreed in the individual contract in a functionally disruptive manner while the warranty is still valid and should the contractor be unable to achieve compliance with the specifications within a reasonable period of time despite sustained efforts, either party to the contract may terminate the contract for the software in question with immediate effect and demand reimbursement of the services or payments received.
  - 6.10 Defects in individual programs do not entitle the principal to terminate the contract with regard to the remaining programs.
  - 6.11 Unless otherwise agreed in an individual contract, further claims arising from defects in the software, with the exception of the claims listed in this item **Fehler! Verweisquelle konnte nicht gefunden werden.**, are excluded.
  - 6.12 The provisions in items 6.1 to 6.11 also apply mutatis mutandis to any liability for defects based on other legal grounds.
  - 6.13 Unless otherwise agreed, a statutory updating obligation pursuant to Directive (EU) 2019/771 for goods with digital elements and for digital services is excluded.
- ## 7 Cybersecurity
- 7.1 The contracting parties undertake to protect their information technology (IT), such as hardware, software, IT systems, networks, Internet-enabled applications, cloud applications used by them, common IT interfaces, as well as all information and data contained therein from IT security incidents by means of appropriate and suitable technical and organisational measures. An "IT security incident" is understood to mean any loss or unauthorised deletion, destruction, modification, disclosure, unauthorised access to or unauthorised control of IT infrastructure, as well as any other unauthorised direct or indirect impact on a party's infrastructure.

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- 7.2 The principal is solely responsible for the design, implementation and upkeep of a state-of-the-art security concept that protects its information technology when software or software extensions are supplied by the contractor. Such a concept includes the installation of updates as soon as they are available to the principal following the contractor's installation instructions and using the latest product versions, following security instructions, installing patches and carrying out related measures.
- 7.3 If a contracting party becomes aware of a possible IT security incident and the possibility cannot be excluded that the security of the IT infrastructure of the other contracting party is or could be compromised as a result, the contracting party concerned has to notify the other contracting party of the IT security incident in a timely manner. Such notification must describe the possible cause and nature of the IT security incident and contain appropriate information on the reasonably expected effects on the IT infrastructure of the other party, to the extent that a reasonable assessment of the facts is already possible at this stage. A subsequent assessment or changes to an existing assessment must be notified to the other party accordingly. This notification is subject to confidentiality.
- 7.4 The contracting party affected by an IT security incident is in any case obliged to take appropriate and proportionate measures with regard to the severity of the IT security incident in order to avert or – if this is not possible – limit the effects on the IT infrastructure of the other contracting party.
- 8 Commercial property rights and copyright**
- 8.1 The contractor will support the principal in the legal defence against all claims based on the fact that the provision of services infringes an industrial property right or copyright effective under Austrian law. The principal will notify the contractor immediately in writing and, in the event of litigation, inform the contractor thereof if such claims are asserted against it.
- 8.2 If claims are asserted based on the infringement of property rights for which the contractor is responsible, the contractor is entitled to modify or replace the software or obtain a right of use. If this should not be possible with reasonable effort, the principal must return the original and all copies of the software, including any documents provided, without delay at the contractor's request. This is deemed to be the final settlement of all claims of the principal relating to the infringement of commercial property rights and copyright, to the exclusion of any further obligation of the contractor.
- 8.3 The contractor reserves the right to audit the use of the software covered or affected by maintenance services ("audit"), subject to giving 14 days' written notice of the audit. The principal is required to assist with the audit and to grant the contractor sufficient access to information. Any payment shortfall must be made within 14 days of a written request for payment. For any cancellation options, see item **Fehler! Verweisquelle konnte nicht gefunden werden..** The assumption of costs for the audit is to be agreed separately. Unless otherwise agreed in an individual contract, the audit costs are to be borne by the principal if the audit reveals material breaches of contract or material licence infringements by the principal.
- 8.4 The principal ensures that the software covered or affected by the maintenance services does not fall under the same OSS licence conditions as any open source software it uses.
- 8.5 For software for which the contractor only possesses a derived right of use and which is not open source software (third-party software), the terms of use agreed between the contractor and its licensor apply additionally and with priority over the present terms, to the extent that they affect the principal (e.g. End User Licence Agreement). The contractor informs the principal of these and makes them available to the principal on request.
- 8.6 The principal is responsible for protecting all rights of the contractor (e.g. industrial property rights, copyright including the right to a copyright notice) to the software and for protecting the contractor's rights to confidentiality of trade and business secrets, including by employees and vicarious agents of the principal or third parties; this also applies if the software has been modified or combined with other programmes. This obligation remains in force even after termination of the contract.
- 9 Liability**
- 9.1 Unless otherwise agreed in an individual contract, the contractor is only liable for damages if intent or gross negligence can be proven, in accordance with the statutory provisions, and the contractor's total liability for gross negligence is limited to the amount of the net maintenance fee for one year. The average annual indexed net maintenance fee is used for multi-year maintenance contracts. The average indexed net maintenance fee for the previous term, up to a maximum of the last three years, is used for open-ended maintenance contracts.
- 9.2 Unless otherwise agreed in an individual contract, liability for slight negligence, with the exception of personal injury, as well as compensation for consequential damage, pure financial loss, indirect damage, loss of production, financing costs, costs for substitute energy, loss of energy, data or information, loss of profit, unrealised savings, loss of interest and damage from third-party claims against the principal are excluded.
- 9.3 Unless otherwise agreed in an individual contract, any compensation for damages is excluded in the event of non-compliance with any conditions for installation, implementation and use (such as those contained in operating instructions) or official authorisation conditions.
- 9.4 If contractual penalties have been agreed, any further claims for damages on the part of the client under the respective title are excluded.
- 9.5 Unless otherwise agreed in an individual contract, the contractor also assumes no liability whatsoever for the cases mentioned in item **Fehler! Verweisquelle konnte nicht gefunden werden..**
- 9.6 The principal is liable to the contractor for damages resulting from non-compliance with the software specifications, the licence conditions and other obligations arising from this contract and will hold the contractor harmless and indemnify it against claims.
- 9.7 The provisions of item **Fehler! Verweisquelle konnte nicht gefunden werden.** apply, unless otherwise agreed, conclusively to all claims of the principal against the contractor, regardless of the legal basis and title, and are also valid for all employees, subcontractors and suppliers of the contractor.
- 10 Duration and termination of the contract**
- 10.1 The duration of the contract and the options for extending or terminating the contract for good cause must be regulated in an individual contract.
- 10.2 Unless otherwise agreed in an individual contract, the principal and the contractor may terminate the contract with immediate effect for good cause.
- Good cause within the meaning of the terms and conditions includes, in particular, repeated or persistent non-fulfilment of essential contractual obligations for a period of at least more than 3 months, which in any case includes the contractual provision of services, as well as obligations to provide assistance and payment obligations.
- 10.3 The contractor may also terminate the contract with immediate effect for the following important reasons
- if material or repeated minor deviations from the licence conditions have been demonstrably determined in an audit pursuant to item 8.3 or otherwise by the contractor;
  - if the principal persistently refuses to remedy deviations demonstrably determined by the contractor in an audit pursuant to item 8.3 or otherwise.
- 10.4 In the event that insolvency proceedings are opened against the principal's assets or a motion to initiate insolvency proceedings is rejected for lack of sufficient assets, the contractor is entitled to withdraw from the contract without setting a grace period. If such a rescission is exercised, it will take effect immediately with the decision that the company will not be continued. If the company is continued a cancellation only becomes effective 6 months after the opening of insolvency proceedings or after the rejection of the motion to initiate insolvency proceedings due to lack of assets. In any case, the contract will be cancelled with immediate effect, provided that this does not conflict with the insolvency law to which the principal is subject or if the cancellation of the contract is essential to prevent serious economic disadvantages for the contractor.
- 10.5 In the event of cancellation for good cause or withdrawal from the contract, any services or partial services already provided are to be invoiced and paid for pursuant to the contract, without prejudice to any claims for damages, including pre-litigation costs. This also applies if the delivery or service has not yet been accepted by the principal as well as for preparatory work carried out by the contractor. Instead, the contractor is also entitled to demand the return of software deliveries already made on the basis of this contract.
- 11 Data protection**
- 11.1 The contracting parties undertake to comply with the provisions and requirements of data protection law, in particular Regulation (EU) 2016/679 ("GDPR") and the Datenschutzgesetz (DSG) [Austrian Data Protection Act], in their up-to-date versions, in the course of the execution of the present legal transaction.
- 11.2 If, in compliance with the aforementioned provisions, further data protection agreements should become necessary for the execution of the legal transaction, the contracting parties will agree on these separately in writing.
- 11.3 The principal grants the contractor a non-exclusive, transferable right, without restriction in terms of time and place and free of charge, to process the data of the system in question in an automated manner and to evaluate it statistically in an anonymised form and to use the knowledge gained in the course of maintenance for its own purposes and in particular for the provision of maintenance services to third parties.
- 12 Assertion of claims**
- All claims of the principal must be asserted before a court within 3 years of the performance of the services, unless statutory provisions provide for other terms, otherwise the claim expires.
- 13 Compliance with export regulations**
- 13.1 The principal is obliged to comply with all applicable provisions of sanctions, embargo and (re-)export control law, and in any case those of the European Union, the United States of America and any locally applicable jurisdiction (hereinafter referred to as "Export Law").
- 13.2 Unless permitted under Export Law or pursuant to applicable government licences or approvals, the principal may not (i) download, install, access or use the software, documentation and/or services (hereinafter referred to as "Deliverables") from or in a location from which access is prohibited or restricted or subject to approval under Export Laws due to comprehensive sanctions; (ii) grant access to, transfer, (re-)export (including deemed (re-)exports) the Deliverables to any company, person or organisation listed on any (sanctions) list under Export Law or owned or controlled by a listed party; (iii) use the Deliverables for a purpose prohibited under Export Law (e.g. in connection with armaments, nuclear technology or weapons); (iv) facilitate the aforementioned activities for a user of the Deliverables.
- 13.3 Where required to comply with export regulations, the principal will provide the contractor immediately upon request with all information about the user(s), the intended use and the place of use of the Deliverables.
- 13.4 The principal indemnifies the contractor, its affiliates, suppliers and their respective agents against all claims, fines and costs (including attorneys' fees and expenses) in any way connected with the failure to comply with this item **Fehler! Verweisquelle konnte nicht gefunden werden.** or the (alleged) infringement of Export Law by the principal or its business partners and undertakes to reimburse all damages and expenses incurred by the contractor in this regard.
- 14 General information**
- 14.1 The contractor must notify the principal if it utilises the services of subcontractors. If these are affiliated companies of the contractor, no separate notification is required.
- 14.2 If individual provisions of the contract or of these terms and conditions should be invalid, this will not affect the validity of the remaining provisions. The invalid provision is to be replaced with a valid provision that approximates the intended objective as closely as possible.
- 14.3 The German-language version will be deemed the authentic version of the terms and conditions and is to be used to interpret the contract.
- 15 Place of jurisdiction and applicable law**
- The exclusive place of jurisdiction for resolving all disputes arising from the contract – including those regarding its existence or non-existence – is the court with subject matter jurisdiction at the contractor's head office; in Vienna, this is the court located in the district of the Local Court of Innere Stadt. The contract is governed by Austrian law to the exclusion of conflict of law rules. Application of the UNCITRAL UN Convention on Contracts for the International Sale of Goods is excluded.
- 16 Reservation clause**
- Performance of the contract on the part of the contractor is subject to the reservation that no obstacles exist under national or international (re-)export regulations, in particular no embargoes and/or other sanctions. The principal

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acknowledges that the contractor may be obliged under Export Law to restrict or disable the access of the principal and/or the user(s) to the Deliverables.

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