



EASY SOFTWARE

GENERAL BUSINESS TERMS OF EASY SOFTWARE AG FOR SOFTWARE MAINTENANCE

1. APPLICABILITY

- 1.1 The following terms and conditions shall apply to the support of the customer with the maintenance of standard software (hereinafter referred to as "Software Maintenance") by EASY SOFTWARE AG (hereinafter referred to as "EASY").
- 1.2 These General Business Terms shall also apply to follow-up orders irrespective of whether reference is explicitly made to these terms and conditions once again with the individual following up order.
- 1.3 Deviating business terms of the customer shall not become part of the contract unless they are explicitly recognised by EASY in writing. The execution of services by EASY does not mean any recognition of business terms of the customer.

2. CONCLUSION OF THE CONTRACT

The offers of EASY are, insofar as not otherwise explicitly agreed, without obligation. The contract shall only be concluded subject to a deviating regulation in the Software Maintenance Certificate with the confirmation of the order placed by the customer by EASY or, insofar as no order confirmation is carried out, with the start of the Software Maintenance services by EASY.

3. OBJECT OF CONTRACT

- 3.1 The object of the contract is the support of the customer with the maintenance of the standard software described in the Software Maintenance Certificate (hereinafter "Software") in the scope as stipulated below (Subclauses 3.2 to 3.7). The software which is to be maintained has the functionalities stated in the maintenance certificate and is executable in the hardware and software environment recommended therein. For purposes of clarification EASY emphasises that through so-called scripting (see Subclause 4. sixth dash) or changes and adjustments to the software not authorized by EASY (see Subclause 4. seventh dash) a produced programme code or programme parts do not belong to the software which is to be maintained as per contract.
- 3.2 EASY shall support the customer with the remedy of faults to the software reported to it by one or several of the following measures which it shall carry out at its choice. A fault exists if the software which is to be maintained in case of use as per contract does not perform the functions described in the performance specifications or in any other product specifications.
 - 3.2.1 EASY shall give instructions for action by e-mail or by telephone to the customer in order to carry out a bypass of the fault or for the troubleshooting by the customer.
 - 3.2.2 EASY shall provide support with the troubleshooting by Remote Access to the software.
 - 3.2.3 EASY shall make a correction programme or programme part ("Patch"/"Hotfix"/"Bugfix") available to the customer for installation.
 - 3.2.4 EASY shall make a fault-adjusted release (Subclause 3.3) available to the customer for installation.
 - 3.2.5 EASY points out that not all occurring faults can be remedied by the afore-mentioned measures. Insofar as it is not possible to remedy faults with a reasonable amount of work bypasses of the fault can be provided.
 - 3.2.6 EASY shall – if and insofar as this is necessary by one of the taken measures for troubleshooting – update the documentation for the software or create new documentation and make this available to the customer.
 - 3.2.7 EASY shall set up a contact point for the customer, which can be reached under the coordinates stated in the maintenance certificate. The faults and interferences can be reported to this contact point by employees of the customer, who have been trained according to Subclause 8.2.
- 3.3 If and insofar as EASY releases of the software – i.e. changes and improvements – to the software with the same functionality, which are marked by the supplement or the change in the secondary digits in the version number of the software (e.g. from 3.0 to 3.1) – are developed and released by EASY, EASY shall make these releases available to the customer.



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- 3.4 EASY shall provide Software Maintenance within the framework of a contract within its business hours workdays (Monday to Friday) between 9 am and 5 pm with the exception of national standard and North Rhine – Westphalia bank holidays.
- 3.5 EASY shall initiate measures for troubleshooting within a reasonable period of time after receipt of the fault report by observing its business hours.
- 3.6 EASY shall provide Software Maintenance for all releases approved at the same time. EASY will inform the customer with a period of announcement of three (3) months about a change to the respective release approved for the Software Maintenance. The customer shall ensure during the contractual term that a release respectively approved for the Software Maintenance is used at the time of change notified to it.
- 3.7 The provision of software programmes within the framework of Software Maintenance services shall be carried out in the object code and in a form which is ready for installation.

4. ADDITIONAL SERVICES

- 4.1 The contractual Software Maintenance services of EASY in particular do not include the following services ("additional services"):
 - the provision of Major Releases, i.e. extended versions of the software with additional functionalities, which are marked by a change in the primary digits (e.g. from 3.0 to 4.0);
 - Maintenance services for hardware, operating systems or networks or for software of third party manufacturers;
 - Maintenance services outside of the service times stated above;
 - Maintenance services, which can only be provided at the place of installation;
 - Maintenance services, which become necessary through the use of the software in another hardware and software environment than that recommended in the Software Maintenance certificate;
 - Maintenance services owing to Scripting: Insofar as the software contains interfaces, which enable a supplement or change to the software by the customer (hereinafter "Scripting") and the customer carries out or has carried out Scripting, then maintenance services which become necessary owing to this are not a part of the contract;
 - Maintenance services owing to any other adjustment or change to the programme code of the software by the customer or a third party which was not authorized by EASY;
 - Maintenance services with regard to the interoperability of the software with software of third party manufacturers, which is not the object of this contract;
 - The provision of the source code of software programmes, which EASY makes available to the customer within the framework of the Software Maintenance services;
 - Services to the software, which become necessary through improper handling and/or by breaches of responsibilities of the customer, for example non-compliance with the user documentation (e.g. operating faults);
- 4.2 Additional services within the meaning of Subclause 4., in particular maintenance service with regard to the software, which become necessary as a result of Scripting, unauthorized change to the software or improper operation as well as the analysis of the fault or interference, which precedes this shall only be provided by EASY against a separate remuneration.

5. RIGHTS OF USE

EASY shall grant the customer a non-exclusive, unlimited and non-transferable right of use to the software programmes, which EASY if applicable makes available to the customer within the framework of Software Maintenance. The conditions for use, which were agreed in the software provision contract of the software, which is to be maintained, shall apply in addition to the use of these software programmes, insofar as available.



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6. REMUNERATION

- 6.1 The amount of the remuneration which is to be paid annually for the Software Maintenance services of EASY can be derived from the Software Maintenance certificate and is deemed plus the respective applicable statutory value added tax.
- 6.2 The remuneration shall be invoice by EASY respectively annually as of the 1.1. of each calendar year for the period of 12 months in advance. If the start of the contract is after the 1.1. then remuneration shall be invoiced in advance for the calendar year, in which the start of the contract falls, notwithstanding Sentence 1 with the start of the contract pro rata until 31.12. The remuneration is payable within fourteen days after receipt of the invoice.
- 6.3 Notwithstanding Subclause 6.2 a mode of payment during the year is possible by agreement (monthly/quarterly/half-yearly). In this case the customer shall bear the instalment surcharge shown in the maintenance certificate on the annual maintenance remuneration. It shall also apply with payment during the year that the instalment which is to be paid is payable within fourteen days after receipt of the invoice.
- 6.4 If the customary remuneration for Software Maintenance services at EASY changes in connection with changes to wages or other costs then EASY is entitled to change the agreed remuneration accordingly after a period of announcement of three (3) months. If EASY increases the remuneration by more than 5% the customer is entitled to terminate the contract extraordinarily within a period of notice of one month after receipt of the announcement at the time when the increase becomes effective. An increase by EASY within twelve (12) months after conclusion of the contract or executed increase is excluded.
- 6.5 The customer is only entitled to rights to offset insofar as its counter-claims are undisputed or have been declared final and binding.

7. CONTRACTUAL TERM / TERMINATION

- 7.1 The contract has an initial term until 31.12. of the calendar year which follows the time when its is concluded. It shall respectively be extended by one (1) further calendar year if it is not terminated by at least one contractual partner towards the other contractual partner with a period of notice of three (3) months before the expiry of the initial term or of the extension period.
- 7.2 The right to extraordinary termination remains unaffected. EASY in particular has the right to an extraordinary termination if
 - the customer seriously breaches its contractual duties in particular the customer undertakes or has undertaken changes to the software without authorization;
 - insolvency proceedings are applied for, opened over the total assets or parts of the assets of the customer or the opening is rejected return unsatisfied;
 - there is a reason for insolvency at the customer within the meaning of §§ 17 to 19 InsO [Bankruptcy Code];
 - the asset circumstances of the customer deteriorate to such an extent that a proper fulfilment of the contract can no longer be expected even if there is no reason for insolvency within the meaning of §§ 17 to 19 InsO or
 - the customer is in default with the payment of the owed remuneration by more than two months.
- 7.3 Terminations have to be carried out in writing by means of a letter whereby it is made clear that the electronic form (e.g. qualified signed e-mail) or the text form (e.g. e-mail, fax, SMS) do not satisfy the written form.

8. DUTIES TO PROVIDE ASSISTANCE

- 8.1 The Customer shall notify EASY of faults and interferences immediately by stating the more detailed circumstances of their occurrence, implications and possible causes, making all information and documents available which are required by EASY in order to diagnose and remedy the fault and follow the instructions issue by EASY in order to diagnose and remedy the fault.
- 8.2 The customer shall on its part set up a contact point for EASY which shall be occupied by an employee, who has more detailed knowledge of the software (administrator knowledge) and who is in the position to forward the information according to Subclause 8.1 and to comply with the instructions which are if applicable issued by EASY.
- 8.3 During possibly necessary test runs the customer shall provide competent employees for this purpose who are authorized to assess



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make decisions regarding defects, extensions to functions, reductions of functions as well as changes to the programme structure. If applicable other work with the computer is to be suspended during the Software Maintenance work.

- 8.4 The customer has to ensure suitable data backup. This relates to the software and other programmes, which are not the object of this contract, as well as the data of the customer. If the customer becomes aware of planned work to remedy interferences and faults by EASY, the customer shall respectively check whether there is an actual data backup, otherwise he shall ensure this.
- 8.5 The customer shall enable an online access for EASY for the purpose of fault diagnosis and remedy. The customer shall further make available and maintain suitable technical equipment for the provision of the Software Maintenance services, e.g. power supply, telephone connections, data transmission lines and programmes, ready for operation.
- 8.6 The customer shall ensure reasonable training measures for those employees who use the software and keep these employees up-to-date with the status of knowledge, which is necessary for using the software, during the contractual term.
- 8.7 The customer shall provide all services for assistance at its costs.

9. CONTACTS

The customer and EASY shall name a competent contract for all questions of the actual execution of the contract.

10. LIMITATION TO LIABILITY

- 10.1 EASY shall be liable for damages according to the statutory provisions for the injury to life, body or health and for damages according to the Product Liability Act.
- 10.2 EASY shall be liable for other damages exclusively according to the following terms and conditions:
 - (a) EASY shall be liable according to the statutory provisions
 - for damages, which were caused by malicious conduct or the absence of a condition guaranteed by EASY;
 - for damages, which were caused by wilful intent or gross negligence of EASY, one of its statutory representatives or vicarious agents.
 - (b) For damages from a slightly negligent breach of essential contractual duties, except in the cases of 10.1 and 10.2 (a), first dash, EASY shall be liable for damages limited to the amount of the foreseeable damages, the occurrence of which typically had to be expected in case of contracts of this kind. To be understand as duty which is essential for the contract in the afore-mentioned sense is such a duty which is essential for the achievement of the purpose of the contract or the satisfaction of which makes the proper execution of the contract possible at all and on the compliance with which the customer may as a rule rely.
- 10.3 A co-fault of the customer is to be offset against the amount of a possible claim for damages. EASY shall in particular only be liable for the replacement of data insofar as the customer has taken all necessary and reasonable precautionary measures for data backup and ensured that the data can be reconstructed from data material, which is kept available in a machine-readable form, with a reasonable amount of work.
- 10.4 With so-called scan programmes of the software (programmes, which provide an electronic entry of paper documents and their conversion into machine-readable data material) Subclause 10.3 Sentence 2 applies accordingly with the additional condition that the customer has ensured that the data until their conversion into a machine-readable form can be reconstructed from data material, which is kept available physically, with a reasonable amount of work.
- 10.5 Incidentally all liability is excluded.

11. STATUTE-OF-LIMITATIONS

- 11.1 Insofar as there is no case of fraudulent intent or the absence of a guaranteed condition the customer's claim for subsequent satisfaction shall become statute-barred owing to
 - a defect of quality of a delivered software programme



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- a defect of title of a delivered software programme (in particular Release or Major Release), which does not consist of an entitlement for hand over of a third party from ownership or another in rem right,

within twelve months beginning with the delivery of the programme.

11.2 Insofar as there is no wilful intent or gross negligence the claim for damages of the customer shall become statute-barred owing to

- a defect of quality of a delivered software programme (in particular Release or Major Release) or

- a defect of title of a delivered software programme (in particular Release or Major Release), which does not consist of an entitlement for hand over of a third party from ownership or another in rem right,

within twelve months beginning with the delivery of the programme. This shall not apply if the damages of the customer in question concern a damage from the injury to life, the body or the health. Claims from the injury to life, the body or the health shall become statute-barred within the legal statute-of-limitations.

11.3 Claims of the customer, which are due to the breach of a duty which does not consist of a defect, shall become statute-barred – insofar as there is no wilful intent or gross negligence – in twelve months beginning with the establishment of the claim. This shall not apply if the claim of the customer in question concerns a damage from the injury to life, the body or the health. Claims from the injury to life, the body or the health shall become statute-barred within the legal statute-of-limitations.

11.4 Cancellation or reduction are invalid if the claim for the service or the claim for subsequent satisfaction of the customer have become statute-barred.

12. NON-DISCLOSURE OBLIGATION AND DATA PROTECTION

12.1 The customer and EASY undertake to treat the information respectively received about the other contractual partner within the framework of the initiation and execution of the contract strictly confidential. The term "information" is principally to be understood in a broad meaning hereby and comprises all documents of an electronic kind and in a print form, including the terms and conditions of the contract as well as the information which becomes known during an oral presentation or discussion. Excluded from this is such information which is public knowledge or which the customer or EASY as proven received from third parties without being obliged to non-disclosure. The use of the received confidential information shall only take place insofar as it is necessary for satisfying the object of the contract. A use for other purposes is not permitted unless the customer or EASY previously declare their consent in a letter form.

12.2 EASY or the customer shall return possibly received confidential information after termination of their services and delete all remaining copies.

12.3 EASY shall comply with the statutory provisions of data protection.

13. Assignment

The assignment or transfer of rights and/or duties from a contract by the customer require the consent of EASY.

14. SUB-CONTRACTORS

Die EASY is entitled to use sub-contractors in full or in part with the execution of services.

15. FINAL PROVISIONS

15.1 All agreements, which include a change, supplement or specification of these General Business Terms or the details contained in the Software Maintenance certificate, are to be recorded in writing. This shall also apply to the amendment or supplementation to this written form clause.



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- 15.2 Should individual clauses of these General Business Terms be or become invalid or non-enforceable in full or in part this shall have no effect on the validity of the other provisions. The same shall apply to the event that these General Business Terms feature a loop-hole in the regulations.
- 15.3 The place of jurisdiction for all disputes from a contract is Mülheim (Ruhr).
- 15.4 The law of the Federal Republic of Germany shall apply. The application of the UN Convention on the International Sale of Goods of 11 April 1980 (CISG Convention of Vienna) is explicitly excluded