



# General Terms and Conditions for the Maintenance of Standard Software

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## A. Subjects of the agreement

### A 1 Object of maintenance

For the agreed remuneration, the provider shall perform the agreed maintenance services only for the current version of the standard software which is the agreed object of maintenance ("maintained software"). If it is expressly stipulated in the contract that third-party software is to be maintained software, the restrictions described there apply to this.

To the extent agreed, the provider shall perform the following maintenance services:

### A 2 Incident management

#### 2.1 Contractual services

The provider shall receive the customer's incident reports, assign the agreed incident categories and, on the basis of such assignment, perform the agreed measures for analyzing and correcting incidents.

Incident management does not involve any services which are associated with the use of maintenance software in unapproved environments or with modifications to the maintenance software by the customer or third parties.

#### 2.2 Acceptance of the customer's incident reports

The provider shall receive the customer's properly prepared incident reports during its customary business hours and furnish each one a case identifier. If requested by the customer, the provider shall confirm receipt of an incident report, including informing it of the case identifier issued.

#### 2.3 Assignment to incident categories

Unless otherwise agreed, the provider shall, after a cursory review, assign incident reports received to one of the following categories:

##### a) Serious incident

The incident is based on a fault in the maintenance software that makes it impossible to use the maintenance software or allows use only with serious restrictions. The customer cannot work around this problem in a reasonable manner and is therefore unable to complete tasks that cannot be postponed.

##### b) Miscellaneous incident

The incident is based on a fault in the maintenance software that restricts the customer's use of the maintenance software in more than a merely insignificant

way without the existence of a serious incident.

c) Miscellaneous report

Incident reports that do not fall into categories a) and b) are assigned to miscellaneous reports. Miscellaneous reports are handled by the provider only in accordance with the agreements that have been entered into for them.

## 2.4 Performance of measures to resolve incidents

In the case of reports concerning serious and miscellaneous incidents, the provider shall immediately initiate appropriate measures based on the circumstances reported by the customer in order to first locate the cause of the incident.

If after initial analysis, the reported incident does not appear to be a defect in the maintenance software, the provider shall immediately communicate this to the customer.

Otherwise the provider shall initiate appropriate measures for further analysis and correction of the reported incident or, in the case of third-party software, forward the incident report, together with the results of its analysis, to the distributor or manufacturer of the maintenance software with the request for corrective action.

The provider shall immediately make measures available to the customer which it has for working around or correcting a defect in the maintenance software, such as instructions or corrections for the maintenance software. The customer shall immediately undertake such measures for working around or correcting incidents and immediately report again to the provider any incidents remaining during their use.

## A 3 Leasing of new versions

### 3.1 Contractual services

The provider shall lease certain new versions of the maintenance software to the customer in order to keep it up-to-date and to prevent incidents. This involves updates of the maintenance software with technical modifications, improvements, minor functional enhancements as well as patches with corrections to the maintenance software or other workarounds for possible incidents. These new versions of the maintenance software are referred to together as "new versions."

The leasing of upgrades with significant functional enhancements or of new products or obligations to further develop the maintenance software is not part of the maintenance services unless otherwise expressly agreed.

### 3.2 Duties and rights with new versions

The provider shall make the new versions of the software available to the customer. The

customer shall promptly examine new versions and complain of discernible defects, for which § 377 of the German Commercial Code (Handelsgesetzbuch – HGB) applies accordingly. Incidents and defects are handled pursuant to section A 2. Sections 4.1 and 2.3 of AV BITKOM apply. If the provider has made a new version available to the customer, it shall also continue to maintain the prior version for a reasonable transitional period, normally not exceeding three months.

If the customer is entitled to claims for defects, the customer initially only has the right to a cure within a reasonable period. Cure involves either repair or the delivery of replacement software, at the option of the provider. The interests of the customer shall be reasonably considered in making the election.

In the case of new versions of third-party software, the warranty provisions in the lease between the customer and the provider for the third-party software have priority otherwise agreed.

#### **A 4 Contact Point (hotline):**

##### **4.1 Contractual services**

The provider shall establish a contract point for the customer (hotline). This office shall process the customer's queries in connection with the technical requirements and conditions for the use of the maintenance software and in connection with individual functional aspects. Section A2.1 applies.

No services are performed by the hotline which are connected with the use of maintenance software in unapproved environments or with modifications to the maintenance software by the customer or third parties.

##### **4.2 Acceptance and processing of queries**

It is a prerequisite to the acceptance and processing of queries that the customer designate appropriate functionally and technically qualified personnel for the provider who are tasked to handle queries from users of the maintenance software internally at the customer. The customer is obligated to direct queries to the hotline only through such personnel who have been designated for the provider and to use forms supplied by the provider for this. The hotline will accept such queries by e-mail, fax and telephone during the provider's customary business hours.

The hotline will process proper queries in the normal course of business and answer them to the extent possible. In response, the hotline can refer to documentation and other training materials for the maintenance software available to the customer. If it is not possible for the hotline to answer the question, or not promptly, the provider shall - if this has been expressly agreed to - refer the query for processing, particularly queries on maintenance software that it has not manufactured.

Further hotline services, such as different response times and deadlines as well as on-call service or on-site assignments of the provider at the customer's premises shall be expressly agreed on in advance.

## **A 5 Additional services**

Services in addition to those in sections A2 through A4 are not owed under this contract; they require a separate agreement and are to be compensated separately. Such services may involve additional agreed assignments on-site at the customer, consulting and support for modified software, clarification of interfaces with third-party systems, installation and configuration support.

## **B. General provisions**

The following provisions apply equally to incident management (A2), the leasing of new versions (A3) and the hotline (A4).

### **B 1 Term**

- 1.1 Unless otherwise agreed, the maintenance agreement begins upon delivery pursuant to the lease for the standard software.
- 1.2 After any agreed minimum term has elapsed, the maintenance contract may be terminated as of the end of a calendar year upon three months' written notice, but not until the end of the calendar year following contract formation. In addition, the provider and the customer may summarily terminate the agreement for cause.
- 1.3 Declarations of termination are only effective in writing.

### **B 2 Remuneration**

#### **2.1 Lump sum remuneration**

The customer shall pay an ongoing fixed amount for the maintenance services. The remuneration for maintenance is owed in advance in the billing period and shall be billed by the provider to the customer at the start of the billing period. The billing period is principally a calendar year. When the lease begins within a billing period, the remuneration owed is prorated and billed upon contract formation.

#### **2.2 Remuneration of additional services**

Additional services which are not compensated through the lump sum remuneration are compensated pursuant to section 1.1 of AV BITKOM.

#### **2.3 Adjustment of the remuneration**

The provider reserves the right to increase the remuneration upon three months' notice, but not in the first twelve months and no more than once per year, in accordance with the growth of the "index of labor costs in the manufacturing and services sector" (Index der Arbeitskosten produzierendes Gewerbe und Dienstleistungsbereich). The provider may pass on additional cost increases for preliminary work by third-parties unless it has caused them. When the annual remuneration increases by more than 5%, the customer is entitled to terminate the lease for cause as of the effective date of the increase by giving six weeks' notice after receipt of the demand for the increase. In the case of a reduction of the corresponding costs, the customer as well may demand a corresponding reduction of the remuneration, but not until the first twelve months have passed.

### **B 3 Usage rights**

The customer's rights to use new versions and miscellaneous corrections to the maintenance software are the same as the usage rights to the previous version of the maintenance software. With respect to the usage rights, after a reasonable transition period usually not lasting more than one month, the rights to the new versions and miscellaneous corrections replace the rights to the previous versions and miscellaneous corrections. The customer may archive a copy.

### **B 4 Duties of the customer**

- 4.1 The customer shall promptly inform the provider in writing concerning changes in the conditions of use, also in order to enable the provider to perform the maintenance service. In addition, the customer shall ensure that the maintenance software is installed only in an environment that is approved for use and supported by the maintenance software. The provider shall not owe any maintenance for software that is not installed in such an environment for use.
- 4.2 Unless otherwise agreed, the customer shall, in addition, store at its own premises all documents, information and data delivered to the provider in a manner that permits such to be reconstructed in case of damage to or loss of data storage media.

### **B 5 Delivery**

If software is delivered within the scope of these terms and conditions and there has been no other agreement, this shall occur in the same manner as with the leasing of the maintenance software.

### **B 6 Data privacy**

To the extent that the provider is able to access personal data that is stored on the systems of the customer, the provider shall work exclusively as a contract data processor - § 11 Paragraph (5) of the German Federal Data Protection Act (Bundesdatenschutzgesetz – BDSG) - and process and use such data only in performance of the contract. The provider shall comply with the customer's instructions for handling such data. The customer shall bear any adverse consequences of such instructions for contract performance. The parties shall agree in writing on details for handling personal data if such is necessary pursuant to § 11 (2) BDSG or other legislation.

### **B 7 Application of AV BITKOM**

The BITKOM General Terms and Conditions of Contract (AV BITKOM) apply in addition.