

## GENERAL TERMS AND CONDITIONS FOR STANDARD SOFTWARE MAINTENANCE of AKI GmbH, Berliner Platz 9, 97080 Würzburg

### 1. Error correction

- 1.1 In particular an error is deemed to be when, regardless of any upstream or downstream data processing, the maintained program does not provide the functions as stated in the software specification, delivers incorrect results, stops running in an uncontrolled manner or does not function correctly in any other way as to make it impossible to use the program or to significantly impair its use.
- 1.2 During the term of the Maintenance Agreement, upon receipt of written notification of an error from the Customer AKI shall examine and analyse the details and remedy the error at the discretion of AKI.
- 1.3 AKI assures that it will react in good time corresponding to the severity of the error.
- 1.4 AKI is entitled to remedy the error by providing the Customer with a modified version of the Software as released by the manufacturer which no longer contains the defect.
- 1.5 An error can also be remedied by means of a technical software workaround providing the functionality of the Software is not or only insignificantly impaired.
- 1.6 AKI can also restrict itself to providing the Customer with details of measures for remedying the error to be performed by the Customer itself insofar as this can be reasonably expected of the Customer. The Customer is obliged to implement these measures itself.
- 1.7 The Customer is obliged to assist AKI in analysing and remedying errors and to allow the inspection of documentation indicating the immediate circumstances leading to the occurrence of an error.

### 2. Continued development and adaptation of the Software

- 2.1 New versions of the Software are prepared by AKI taking into consideration the requirements of technical developments and are then provided to the Customer within the scope of the Maintenance Agreement. AKI shall grant the Customer the right to use the new versions corresponding to the right to use the Software as originally provided to the Customer. New versions of the software are to be respectively installed by the Customer promptly following delivery and examined to ensure they function properly.
- 2.2 Should the manufacturer change the operating system so that the Software as subject to this Agreement is no longer compatible, AKI shall offer the Customer as requested accordingly a new compatible version of the Software within six months and provide it to the Customer within the scope of the Maintenance Agreement. This period of six months is calculated from the date on which the manufacturer of the operating system released the final version of the changed operating system. The aforementioned obligation shall only apply insofar as this is possible for AKI under sensible conditions and at reasonable expense.

### 3. Hotline service

- 3.1 The Customer can obtain information on remedying

non-critical defects or solving minor problems via a telephone hotline service operated by AKI, which is occupied at the premises of AKI in Würzburg between 8 am and 5.30 pm from Monday to Friday (excluding public holidays). The hotline is also available outside of the aforementioned times on the basis of special, individually arranged fees.

- 3.2 Should it be established that utilisation of the hotline is to be attributed to a fault on the part of the Customer, AKI reserves the right (following consultation with the Customer) to charge for the time spent accordingly.

### 4. Excluded services

- 4.1 The obligation to render services on the part of AKI in accordance with this Agreement is confined to the services as mentioned above in Sections 1 – 3.
- 4.2 In particular, this obligation to render services excludes:
  - The provision and granting of rights to use other modules.
  - The remedying of disruptions that are not to be attributed to the Software, e.g. disruptions caused by operating errors and external influences, in particular force or the influences of upstream or downstream data processing. This does not apply to operating errors that occur due to mistakes in the operating manual or as the result of wrong instructions given by employees of AKI.
  - Adaptation of the Software to accommodate new customer requirements.
- 4.3 Services that are not expressly contained within the scope of this Agreement are to be agreed and remunerated separately.
- 4.4 The standard maintenance services do not generally include the maintenance of software components specifically provided for the Customer or of individual adaptations ("customizing"). A separate agreement is required to cover such extra services.

### 5. Utilisation of up-to-date software

- 5.1 Fundamentally the Customer is under obligation to use only the latest version of the contractual software as released and provided by AKI. This applies correspondingly to the utilisation of the operating system as laid down in the Software Maintenance Agreement and/or any other third-party software that is required to operate the AKI software.
- 5.2 If the Customer is using one or more older versions of the Software, AKI can refuse to provide the service in question where utilisation of the older version would cause unreasonable additional time and expense on the part of AKI with regard to the software maintenance. The Customer can continue to use the older version subject to approval by AKI.
- 5.3 If the Customer is using an older version of the Software, AKI shall remain at liberty to invoice the Customer in accordance with the current AKI price lists for additional expenses arising from the utilisation of the older version.

### 6. Procedure for reporting errors

- 6.1 The Customer coordinates internal error reports and queries for the hotline through its responsible caseworker so that AKI is in principle only contacted through this caseworker. The Customer shall notify AKI in good time of any changes regarding the person concerned and the contact partner or the latter's communication details. In turn, AKI shall notify its internal point of contact.
- 6.2 The Customer shall make available the Software and (where applicable) suitably qualified employees and computer time when AKI performs maintenance services at the Customer.
- 6.3 Insofar as AKI renders services by means of remote data transfer, the Customer shall provide suitable and operative devices and programs at own cost.

## 7. Fees

- 7.1 Maintenance fees are to be paid respectively one year in advance. They are due respectively on the 1st day of the first month of the contractual year. A deviating method of payment is subject to a special agreement.
- 7.2 If maintenance begins during an ongoing month, the fees will be calculated from the following month.
- 7.3 If the scope of the right of use granted to the Customer is extended, the maintenance fees will be adapted at the same time in accordance with the current list price.

## 8. Increases in maintenance fees

AKI is entitled to increase the maintenance fees within reason and subject to notice of three months to the end of the contractual year. In this case, the customer shall be entitled to terminate the contract within 4 weeks of receipt of notification pursuant to the agreed termination provision.

## 9. Warranty

- 9.1 AKI warrants that the maintenance services are not impaired by faults which preclude or significantly reduce their value or suitability regarding the fulfilment of the purposes of this Agreement.
- 9.2 A warranty period of 12 months covering deficiencies in the maintenance services usually applies unless agreed otherwise. This period begins with the rendition of the maintenance services.
- 9.3 The warranty provisions as laid down in the Software Licence Agreement otherwise apply accordingly with regard to the warranty.

## 10. Liability

- 10.1 AKI shall not be liable for slightly negligent breaches of obligation unless these concern a breach of material obligations. In the case of slightly negligent breaches of obligation, liability is limited to the typical damages that could occur in association with the type of subject of agreement. This also applies to slightly negligent breaches of obligation by legal representatives and agents.
- 10.2 Liability for injury as well as in accordance with the German Product Liability Act shall remain unprejudiced. Liability for prohibited actions in accordance with §§ 823, 831 of the German Civil Code (BGB) is excluded.
- 10.3 In the event of data loss, AKI shall assume maximum liability covering the costs of duplicating the data in backup copies, as well as for the restoration of data that

would have been lost even in the event of a regular and proper creation of backup copies by the Customer. The Customer is responsible for creating the backup copies.

## 11. Term of the Agreement, termination

- 11.1 The Agreement shall remain in effect for an indefinite period of time. It shall be extended by one year respectively provided it is not terminated in writing by one of the Parties subject to a period of notice of 3 months to the end of the contractual year.
- 11.2 The entitlement to extraordinary termination remains unprejudiced. In particular, AKI shall be entitled to an extraordinary termination should the Customer default on payment of the fees by more than one month.

## 12. Confidentiality

AKI shall handle in a confidential manner information and data that is marked as being confidential or which is obviously confidential, in particular such personal data that becomes known to AKI during the course of rendering the contractual services. AKI shall ensure that the employees deployed for this purpose are placed under obligation to observe data confidentiality in accordance with the German Federal Data Protection Act.

## 13. Other provisions

- 13.1 The transfer of rights and obligations arising from the Software Provision Agreement by one of the Partners to the Agreement to a third party is subject to the prior written approval of the other Partner to the Agreement.
- 13.2 Claims can only be set off against AKI in the case of undisputed or conclusively determined claims.
- 13.3 The invalidity of one or more provisions of this Agreement shall not otherwise affect the validity of the Agreement. The Parties to the Agreement hereby agree to replace the void provision with a valid stipulation which reflects the intended economic purpose of the void provision as closely as possible. The same shall apply in the event of a loophole in the Agreement that needs to be regulated.
- 13.4 Any secondary arrangements, amendments or supplements to this Agreement must be made in writing. This also applies to an annulment of the statutory written form. Verbal arrangements are to be confirmed in writing.
- 13.5 If the Customer is a merchant within the meaning of the German Commercial Code, Würzburg is hereby agreed as the venue for all disputes arising from the contractual relationship. AKI shall also be free to bring a law suit against the Customer at another venue.
- 13.6 The laws of the Federal Republic of Germany apply. The provisions of the UN Sales Convention do not apply.
- 13.7 Only these conditions apply to the Agreement. The general terms and conditions of the Customer do not apply.