

General Terms and Conditions of Business of ATOSS Software AG

– hereinafter referred to as the "COMPANY" –

Am Moosfeld 3 · 81829 Munich · Telephone +49. 89. 4 27 71-0 · Fax +49. 89. 4 27 71-100 · www.atoss.com

Software maintenance

§ 1 General object of maintenance services

The program maintenance shall comprise:

- a) Further development of programs with respect to quality and up-to-date status.
- b) Adaptation of programs in the instance of modifications to the system platform agreed in the licensing agreement. Maintenance shall not include adjustments to other system platforms.
- c) Delivery of new releases. This includes new releases that comprise part of the scope of services of the programs, and which deliver functional or technological adjustments in this respect.
- d) Provision of up-to-date manuals and documentation relating to the new releases.
- e) Rectification of program defects following the expiry of the warranty period.

§ 2 Scope of maintenance services in detail

1. Supported programs

According to these terms, the COMPANY shall provide the CUSTOMER with software maintenance services exclusively for the following releases:

- a) The relevant current major release of the programs listed in the individual agreements.
- b) The relevant current minor release of the programs listed in the individual agreements, but only until the publication of an upwards-compatible minor release.
- c) The minor release of the program directly preceding the relevant current major release, but only for a period of 12 months following the issuing of the then valid and generally available major program release.
- d) The directly preceding major release of a program, but only for a period of 12 months following the issuing of the then valid and generally available major release.

Following the times mentioned in figures c) and d), the COMPANY shall render software maintenance services for older releases only according to separate service agreements, and on the basis of costs usually invoiced for such services.

The term major release shall refer to any release designated as such by the COMPANY by the use of a pre-decimal-point release number (e.g. 3.x; 4.x etc).

The term minor release shall refer to any release designated as such by the COMPANY by the use of a post-decimal-point release number (e.g. x.1; x.2 etc).

The term release shall refer to both major releases and minor releases.

2. Releases

The COMPANY shall provide new releases as part of maintenance. New releases may also consist only of the provision of individual new modules. The COMPANY shall make new releases available by post on an agreed data carrier, or by an electronic download from the Internet. The CUSTOMER shall be responsible for the storage of the release.

The COMPANY shall grant to the CUSTOMER the rights of use relating to the releases agreed in the relevant licensing agreement.

The COMPANY shall accept suggestions for improvement, shall examine their general feasibility and possibilities for implementation, and shall subsequently decide whether to implement any suggestions. The COMPANY shall not be liable for any payment to any use it makes of a CUSTOMER's suggestions for improvement; once a suggestion for improvement has been submitted, all potential rights arising from the CUSTOMER's suggestion shall transfer free of charge to the COMPANY.

3. Rectification of defects

The COMPANY shall commence with the rectification of defects

- a) in the case of defects preventing the continuation of operations: within one hour following receipt of the defect notification during the regular business hours of the development department of the COMPANY;
- b) in the case of defects hampering the continuation of operations: within one day following receipt of the defect notification during the regular business hours of the development department of the COMPANY;
- c) in the case of other defects: within a suitable time period, in all cases as part of the development of the next release.

Defect categories:

a) *Defects preventing the continuation of operations* (defect category 1): severe defects, e.g. defects that prevent the use of the software; defects in central functions that result in a breakdown of the entire application.

b) *Defects hampering the continuation of operations* (defect category 2): medium-level defects, e.g. application defects that do not result in a breakdown, do not belong to the defects listed in defect category 1, and which are nevertheless of such significance that rectification of the defect should not be delayed until the next release. In particular, it would prove inappropriate to circumvent the defect using organisational means. *In particular, the defect cannot be circumvented by organisational means in an appropriate manner.*

c) *Other defects* (defect category 3): minor defects, e.g. defects that have no significant effect with respect to functionality and usability. Such defects do not limit use of the programs, or only to an insignificant extent.

The obligation to rectify program errors shall lapse if the CUSTOMER or third parties implement changes to the license material or its surroundings, as a result of which the defects arise.

The occurrence of defects shall not entitle the CUSTOMER to withhold or curtail payments.

The COMPANY shall be liable for the implementation of commercially and technically appropriate measures to rectify errors, or for the provision of instructions for how to circumvent defects. The CUSTOMER shall support the COMPANY to an appropriate extent in this respect.

§ 3 Support provided by the CUSTOMER

The CUSTOMER shall provide the COMPANY with an appropriate level of support in the rendering of software maintenance services, particularly including the following:

- a) If the CUSTOMER discovers a program defect, it must notify the COMPANY of the defect along with the provision of all requisite documents, in other words, file extracts, defect description, and any dumps. The COMPANY may also require other documentation if required. The COMPANY shall guarantee that it treats such data confidentially.
- b) The CUSTOMER itself must install any defect rectification programs (bug fixes, patches, maintenance releases).
- c) In order to allow the software maintenance services to be rendered correctly, the CUSTOMER shall provide the COMPANY with remote access to its IT system that allows the COMPANY to perform a remote diagnosis of defects. The COMPANY cannot ensure the smooth delivery of software maintenance services if the CUSTOMER fails to provide the COMPANY with remote access upon request.

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d) The CUSTOMER shall nominate a contact person (system manager) to the COMPANY, as well as a replacement, who shall be responsible for all communications connected with the COMPANY's provision of software maintenance services. The CUSTOMER's system manager shall ensure the provision of a First Line Support for the CUSTOMER's program users. This shall also apply for multiple installations following the prior conclusion of ancillary licenses. The system manager shall be logged in the COMPANY's sales information system.

e) The CUSTOMER shall ensure that the relevant system preconditions for the use of the COMPANY's software programs are adhered to.

§ 4 Excluded services

The following services shall be excluded:

- a) Services for programs that the CUSTOMER has failed to use in line with the relevant documentation.
- b) The provision of entirely new functions that represent a significant expansion of the scope of service, as well as the provision of new products. The COMPANY shall offer such extensions and new products for purchase in return for separate payment.
- c) The installation of new releases, as well as adjustments to the CUSTOMER system environment that are required.
- d) On-site services - to the extent not otherwise agreed.

§ 5 Duration

Either of the contractual parties may first cancel the software maintenance agreement at the end of a period of five years. The cancellation notice period shall be three months in each case. If the maintenance agreement has not been cancelled with a notice period of three months before the expiry of the relevant period it shall be extended in each case by a further 12 months after the expiry of the five years. The end-customer shall be entitled to a special right of cancellation relating to the software maintenance agreement as of the end of the payment period designated in the relevant individual agreement if it discontinues the use of the license material, or individual modules of the license material. Proportional reimbursement of due or partially rendered software maintenance fees shall be excluded. Following the exercise of the above-mentioned special cancellation right, the end-customer shall be obligated to provide the COMPANY with all copies or partial copies of the relevant programs, or to destroy (delete) them, and to assure the COMPANY upon request of such deletion in lieu of oath; the same shall apply for any pre-delivered program documentation. The CUSTOMER shall be entitled to require continued use for purely archiving purposes, to the extent that such use is necessary as a result of mandatory statutory regulations.

§ 6 Software maintenance fees

The software maintenance fees stipulated in the individual agreement shall be the due instalments stipulated in the individual agreement, to be paid in each case in advance plus statutory VAT, and for the first time on the first date of the month following the delivery of the license material. The COMPANY shall be entitled to adjust the software maintenance fees as of January 1 of each year, whereby the adjustment may not exceed the interim rise in the official consumer price index for the Federal Republic of Germany, or its replacement index, by more than two full percentage points. All invoices shall be payable within 10 days following the invoice date, and without deduction.

The maintenance fees shall rise in accordance with the COMPANY's relevant valid price list if the CUSTOMER enters into

license extensions and subsequent module purchases or ancillary licenses above and beyond the COMPANY's software products already licensed at the time of the conclusion of the first agreement.

§ 7 Qualitative service malfunctions

If the software maintenance services fail to be rendered according to the contract, and the COMPANY is responsible in this respect, it shall be obligated to render the software maintenance services in accordance with the contract within an appropriate time period, and without additional costs for the CUSTOMER. This must be preceded by an immediate and written complaint submitted by the CUSTOMER. The complaint must be submitted at the latest within two weeks following identification of the source of the complaint, or from the time at which the CUSTOMER would have become aware of the source of the complaint without gross negligence. The CUSTOMER shall be entitled to cancel the agreement immediately without notice if the contractual software maintenance services fail to be rendered to a significant degree within an appropriate grace period notified in writing by the CUSTOMER, and for reasons for which the CUSTOMER is not responsible.

The COMPANY in this instance shall be entitled to payment for services rendered on the basis of the agreement until the coming into force of the cancellation. This payment shall be inapplicable only for such services for which the CUSTOMER provides evidence within two weeks following the cancellation that the services are of no use and without interest for it. The right to extraordinary cancellation shall be hereby unaffected. More extensive CUSTOMER claims with respect to qualitative service malfunctions shall be excluded. This exclusion shall not be valid for qualitative service malfunctions caused intentionally or as the result of gross negligence, as well as not in the instance of damage to life, body or health.

§ 8 Liability

The COMPANY's liability shall be limited to €25,000.00, irrespective of legal reason. The COMPANY shall not be liable for lost earnings, unrealised cost-savings, damages arising from third-party claims and other direct and indirect losses, as well as for recorded data. The above liability limits and liability exclusions shall not apply for damages based on a guarantee, the malicious concealment of defects, or on an infringement of key contractual obligations jeopardising the purpose of the agreement (cardinal duties), and for damages which the COMPANY or its vicarious agents have caused intentionally or as the result of gross negligence, or which were caused as the result of slight negligence and have resulted in damages arising from injury to life, body or health.

§ 9 Limitation of actions

Liability claims and claims arising from qualitative service malfunction shall be subject to a limitation period of one year from the time when the circumstances giving rise to the claim became known, or from the date on which the CUSTOMER would have become aware of this matter without gross negligence, at the latest, however, five years following the occurrence of the event giving rise to the liability. Limitation of actions in the case of liability as the result of intentional actions shall be according to statutory regulations.

§ 10 Data protection

The CUSTOMER shall ensure that the COMPANY is informed of all relevant matters above and beyond statutory regulations that the COMPANY is required to know for data

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protection and confidentiality reasons. The COMPANY shall ensure that all persons entrusted with the processing and satisfaction of the agreement adhere to data protection terms. Both the CUSTOMER and the COMPANY shall be obligated to treat with confidentiality all confidential information, and business and operating secrets acquired as part of the contractual agreement, and, in particular, not to forward them to third parties, or to reuse them for purposes other than the contractual purposes.

§ 11 Written form requirement, legal system, place of jurisdiction

Modifications and supplements shall require written form for them to be effective. Contrary business terms on the part of the CUSTOMER shall not be applicable. Exclusively German law shall be applicable to this agreement; application of the "UN Sales Convention" (United Nations Convention on Contracts for the International Sale of Goods) shall be expressly excluded. The location for the satisfaction of all obligations arising from this agreement, and the exclusive place of jurisdiction, shall be Munich.

§ 12 Safeguarding clause

Should individual provisions prove ineffective, the efficacy of the remaining provisions shall be hereby unaffected. The parties shall cooperate in order to replace ineffective regulations with such regulations that correspond as far as possible to the ineffective provisions.