

## **GROUP Business Software AG**

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### **1. Type and extent of the agreement**

- (1) GROUP provides maintenance services for the software in accordance with the following maintenance agreements.
- (2) Maintenance is subject to lawful purchase of software licences and acceptance of the respective valid licence agreements.
- (3) Maintenance applies to the version held by the licensee when the contract was concluded, taking into account previously rendered and provided maintenance services to date.
- (4) Software altered by the licensee or by third parties is only subject to maintenance if GROUP approved the alteration in writing, with reference to updates to the maintenance agreements.
- (5) GROUP is entitled to commission subcontractors (e.g. authorised partners) with implementation of software maintenance.
- (6) Any additional services require separate agreements. They are remunerated by GROUP in accordance with the valid pricelist at the time of provision of the service.

### **2. Term of the contract**

- (1) The initial term of the contract is 12 calendar months, plus any applicable part of a month at commencement of the contract.
- (2) **The contract is automatically extended by a further 12 months in each case, unless it is terminated to the end of a term, with a three month notice period.** Prior to expiry of the contract, the licensee may, by written order, extend the maintenance contract for a period of 2 or 3 years.
- (3) Notices of termination shall be given in writing.

### 3. Type and extent of the maintenance services

GROUP provides the following maintenance services:

#### (1) Download service for new programme versions

GROUP offers the following, 24 hours per day:

- Provision of the latest available changes of existing amendments (workaround, patch, programme correction/fix, release) to the software. New products, not included in the original maintenance agreement, are excluded.
- Provision of available software adjustments required after legislation amendments, if these can be implemented within the framework of the installed programmes.
- Provision of available and adapted associated documentation.
- Internet information to the client regarding available amendments and further developments of the software.
- Knowledge base: Internet support via a debugging database, including recommendations for improvement.

#### (2) Standard support services by GROUP

GROUP provides the following standard support services for the software, unless otherwise specified in the maintenance certificate:

- Telephonic support during service times via a special telephone-/hotline number to report problems and errors to and consult with a product specialist. The service times are: Mondays to Fridays, 08:30 to 18:00 on all workdays, excluding 24.12 and 31.12 in Baden Württemberg.
- E-mail support via a special e-mail address and a special website providing information and to report problems and errors and consult with a product specialist.

The support services are structured as 1st level, 2nd level and 3rd level support.

1<sup>st</sup> level support includes:

- Initial acceptance and recording of support requests, dispatch functions
- Rating the support requests according to level of severity, priorities and problem categories
- Support with installation and configuration
- Initial problem- and error rating based on configuration- and log data, etc.
- Administration of support requests, problem scaling, documentation

2<sup>nd</sup> level of support includes:

- Qualified problem- and fault analysis through diagnostic tools
- Simulation of problems and fault events on test systems, under laboratory conditions
- Compiling a qualified problem-/fault report for GROUP's Support or Development

3<sup>rd</sup> level support includes:

- Rapid and comprehensive detailed fault analysis of problems in severity levels 1 and 2 (refer to 4)
- Speedy and detailed fault analysis of problems in severity levels 3 and 4 (refer to 4)

- Providing workarounds
- Correcting software faults

(4) Fault classes and reaction times

GROUP shall endeavour to provide solutions for identified software faults by providing corrections, and shall support the client in solving fault events and problems in 3rd level support, classified as follows:

*Severity 1 – Critical Business Impact*

The software does not function and/or is severely impaired or server freeze causes interruption of operation/dysfunction on clients' systems.

*Severity 2 – Significant Business Impact*

The basic functions of the software are not available and/or severely impaired. The impairment causes malfunctions and/or restricted application on clients' systems.

*Severity 3 – Some Business Impact*

The basic functions of the software are impaired but a temporary workaround is available or secondary functions of the software are impaired. The impairment causes slightly restricted use in its functionality on clients' systems.

*Severity 4 – Minimal Business Impact*

A secondary partial function of the software is impaired. The impairment does not restrict utilisation or functionality on clients' systems.

The reaction times are:

- Severity 1 – Critical Business Impact  
as a rule within 8 hours
- Severity 2 – Significant Business Impact  
as a rule within 24 hours
- Severity 3 – Some Business Impact  
as a rule within 3 working days
- Severity 4 – Minimal Business Impact  
as a rule within 5 working days

Classification of a problem and/or fault into one of the classes is done by the Support at GROUP. The registered resellers immediately notify GROUP of faults and/or problem events experienced by end clients.

#### **4. Remuneration**

(1) The annual remuneration amount is given in the current GROUP pricelist.

(2) GROUP is entitled to adjust the remuneration at the beginning of a contractual year in accordance with the current GROUP pricelist. GROUP shall notify the client in writing of any changes to the remuneration, two months in advance. If the support- and maintenance fee increases by more than 10% within 12 months of the last adjustment, the client is entitled to terminate the contract, subject to a notice period of one month to the end of the month preceding the effective fee adjustment.

(3) If the client is in arrears with a payment, in whole or in part, GROUP is entitled to charge the statutory interest of 8% p.a. above the prime lending rate from that point in time. The right to any further claims is reserved.

#### **5. Client's duties to collaborate with regard to maintenance and support**

(1) The client shall support GROUP in all respects with regard to compliance with the contractual duties to perform. In particular, within the framework of his means, he will support GROUP to the best of his ability in establishing the cause of a fault and, if necessary, arrange cooperation of his employees with those commissioned by GROUP. The support services also include utilisation of appropriate support by third parties for installed operating systems, mail software systems and third party components which are not software products but are used in conjunction with such.

(2) GROUP is entitled to request the client's contact person to verify that he/she has been trained to use the maintained programmes. Fault reporting shall only be by the contact person or, in his absence, by his representative.

(3) Regarding fault reporting, the client shall carefully monitor observed symptoms and the system- and hardware environment and – if necessary by means of the forms provided by GROUP – report such fault to GROUP, including useful information for fault clearance, such as the number of users affected, description of the system- and hardware environment as well as simultaneously installed outside software, if applicable, and documentation. Detected malfunctions shall be provided to GROUP in reproducible form on a suitable data carrier.

(4) Following GROUP's specific instructions, the client shall implement the corrections provided by GROUP, directly or on the Internet, and adhere to GROUP's recommendations with regard to fault finding and fault clearance.

(5) The client is obligated to implement proper data security. In particular, he is obligated to secure his data immediately before applying or implementing a maintenance service and to have available all used or compiled data in connection with the maintained programmes in machine-readable form, as a secure copy, enabling reconstruction of lost data with justifiable effort.

(6) The client may set up a first level support within his company to handle the bulk of service requests by software users. As far as possible, the first level support handles service requests by software users independently and shall only pass on to GROUP service requests which he is unable to handle himself, via the responsible person appointed by the client.

(7) The client shall ensure that the employees commissioned by GROUP to implement the software support services, in the case of separately commissioned on-site services, have free access to each computer and its software at the agreed time. The client shall ensure that a qualified employee of his is present at the site in a supportive capacity during these on-site software support services.

(8) The aforementioned duties to collaborate constitute essential contractual duties. Should the client violate his duties to collaborate, GROUP is not obligated to provide service. In the event of recurring or gross breach of duty, GROUP is entitled to give notice with a period of one month. The contractual relationship terminates at the end of the following month.

### **6. Data security/Non-disclosure**

(1) The client shall ensure that GROUP is notified of all relevant facts, over and above the legal arrangements, which GROUP requires for reasons of data security and confidentiality.

(2) The client and GROUP are obligated to treat all confidential information, as well as trade- and company secrets, received within the framework of the maintenance relationship, in strict confidence, especially to not divulge such information to third parties or use same for other than contractual purposes.

### **7. Rights of use of the software**

(1) GROUP grants the client rights of use for all corrections to the extent that they exist in the programme for which they are intended or which they should replace.

(2) The right of use of the software, which was technically replaced by the corrections supplied, expires within two weeks following productive application of the supplied programmes by the client, or no later than one calendar month after the client has received the supplied programmes.

### **8. Warranty**

(1) GROUP guarantees that the maintenance services granted in the form of software programmes (hereinafter called 'maintenance programme'), do not have material defects. A slight defect is insignificant. Reproducibility or detectability of the defects are prerequisites for warranty claims.

(2) Warrantees are not applicable if the client alters the maintenance programmes himself, or has them altered by third parties, without GROUP's approval.

(3) If the maintenance programmes show a defect in terms of Par. (1), the client first of all has a claim against GROUP for remedial action – by the customers choice – for circumvention or replacement. If remedial action fails twice the customer might choose between an adequate abatement of purchase price or cancellation of the contract.

Remedy of defects includes the provision of a printed or printable correction procedure for the documentation, if this is required.

(4) The warranty is only applicable to the latest version of the GROUP software provided to the client. The client shall accept a new version. The client shall support GROUP to an appropriate and reasonable extent. This, for instance, includes utilisation of respective support by third parties for installed operating systems, mail software systems and third party components which are not GROUP software products, but are used in conjunction with these. In particular, the client grants GROUP reasonable time and opportunity to implement remedial action tasks.

(5) Should GROUP, even after two remedial actions, be unable to achieve the contractually required flawless performance, the client is entitled, upon expiry of a reasonable additional respite, to reduce (reduction) the maintenance compensation accordingly or to terminate the maintenance agreement. A claim for damages up to 10,000 Euros exists.

(6) The warranty period is 12 months. The period commences with provision of the maintenance programmes. If the client is a merchant, warranty is excluded if he does not immediately test the maintenance programmes after provision and reports any faults detected. A defect shall be reported within reasonable time, no later than 14 days after detection.

(7) The limitation of liability in Par. (5) is not applicable if a guarantee exists, if a defect has been fraudulently concealed, in the event of injuries to persons as well as malice or gross negligence. Claims by the client for compensation for loss of profit are excluded.

(8) Product- and other feature descriptions by GROUP do not constitute guarantees in respect of condition or durability in terms of § 443 of the Civil Code [BGB]. The Parties agree that a warranty in terms of § 443 of the Civil Code [BGB] is only applicable if GROUP furnishes same in writing by using the term 'warranty' and by complying with the form stipulated in § 477 of the Civil Code [BGB].

(9) Should it become apparent that services provided by GROUP are not included in the warranty, the client shall bear the costs, including possibly accruing travelling costs and expenses. In each case, reimbursement of costs by the client shall be based on GROUP's applicable hourly- and travelling cost rates.

## **9. Violation of proprietary rights**

(1) Should a third party lay a claim against the client for violation of proprietary rights, due to corrections, and should use of the corrections be impaired or prohibited hereby, GROUP shall be liable as follows: at its own choice and cost, GROUP shall either change or replace the corrections in such a manner as not to impair the proprietary right, but in essence conforming to the agreed functional- and service features in a manner reasonable to the client, or shall exempt the client from licence fees for use of the corrections payable to the holder of the proprietary rights or to third parties. Should GROUP not accomplish this under reasonable conditions, it shall take back the corrections, refunding the price paid by the client minus an amount for the period of use of the corrections. In this case, the client is obligated to return the corrections to GROUP.

(2) The preconditions for liability by GROUP in accordance with Par. (1) are that the client notifies GROUP of claims by third parties without delay, does not acknowledge the alleged violation of proprietary rights and either leaves all disputes, including any out of court arrangements, to GROUP, or conducts such arrangements only with GROUP's approval.

GROUP will bear all costs associated with the client's legal defence, including court- and lawyers' expenses. Should the client cease the use of corrections for reasons of mitigation of damages or other important reasons, he is obligated to inform the third party that the cessation of use does not imply acknowledgement of the alleged violation of proprietary rights.

(3) Insofar as the client is personally responsible for the violation of proprietary rights, claims against GROUP are excluded.

(4) Further claims by the client in respect of violation of proprietary rights of third parties are excluded. This exclusion is not applicable if a guarantee exists, if a defect has been fraudulently concealed, in the event of injuries to persons or with malice or gross negligence.

## **10. Liability**

(1) In conclusion, GROUP's liability for material defects is regulated in Section 8, and for violation of proprietary rights in Section 9. For the rest, GROUP is liable as follows for claims for damages due to breach of duty and breach of contractual obligations as specified in § 311 of the Civil Code [BGB].

For material damages up to 300,000 Euros per damage event; but up to a maximum 1.0 million Euros per agreement. For pecuniary damages, a maximum 10% of the total amount of the agreement; but in total a maximum 300,000 Euros per agreement. In respect of loss of data, GROUP shall only be liable for the expenses in terms of data recovery which would be incurred by the client when data is properly secured.

(2) The liability limitations in acc. with Par. (1) are not applicable with regard to malice or gross negligence, injuries to persons, breach of cardinal obligations or when liability is mandatory in terms of Product Liability Law [Produkthaftungsgesetz]. Claims by the client for compensation of loss of profit are excluded.

(3) The statute of limitation of claims by the client as per Section 8 is regulated conclusively. For the rest, claims for damages against the other contractual partner are prescribed in accordance with the legal regulations, but no later than 3 years after provision or implementation of the defective service.

## **11. Other**

(1) Deviating or supplementary requirements, as well as supplementary agreements or changes to these requirements are only applicable if agreed upon in writing.

(2) The general rules and conditions of GROUP as amended from time to time shall apply additionally.

(3) The client may only confer the rights and duties arising from the contract to third parties subject to prior written approval by GROUP.

(4) The client may only set off against claims by GROUP or exercise right of retention if the counterclaim of the client is uncontested or legally binding.

(5) The place of fulfilment with regard to all obligations shall be Karlsruhe.

(6) If the client is a merchant, a corporate body under public law or a separate estate under public law, it is agreed that Karlsruhe shall be the place of jurisdiction. GROUP is, however, entitled to institute proceedings against the client at the relevant generally applicable place of jurisdiction.

(7) German law, excluding the UN Sales Law, is applicable to the legal relationship between GROUP and the client.

(8) Notwithstanding possible legal inefficacy of individual points, the contract concluded in accordance with these conditions remains binding in its other parts. The Parties shall substitute ineffective provisions with effective provisions, which meet the intended purpose as close as possible. The same is applicable in case of an omission in the contract.

As at June 2010

<i>Download service</i>	Provision of new software versions on the Internet, facilitating download to the client's computer.
<i>Correction</i>	Generic term for workaround, patch, programme correction/ fix and release
<i>Client</i>	End client or reseller of GROUP
<i>Patch configuration change</i>	Temporary fault correction in the software including the source code.
<i>Programme correction/remedy</i>	Correction of a single fault in the source code of the software.
<i>Reaction time</i>	The period within which GROUP generally commences maintenance services. It commences with receipt of the fault report within the agreed service times and solely lapses during the agreed service times.
<i>Release</i>	<p>Major release: New and/or changed important functionalities and programme corrections in the software (e.g. 4.5.7. p 5.0.0).</p> <p>Minor release: Functional adjustments to the software, based on technological changes by software providers such as Microsoft and Lotus (e.g. 4.1p 4.2).</p> <p>Service release: Bundling of several programme corrections in the software in a single delivery (e.g. 4.1.a p 4.1.b).</p> <p>Beta release: Fully functional products not yet having passed a quality assurance test. Version β1 is an initial version that has successfully passed the basic test. In comparison, the β2 version is a version that has successfully passed all complex test scenarios.</p>
<i>Service times</i>	Times during which the client is entitled to services provided by GROUP.
<i>Software</i>	The software products of the GROUP Business Software AG.
<i>Standard support services</i>	Call acceptance of software problems and qualified consulting is conducted during the service times including call-back by GROUP, if applicable.
<i>Workaround</i>	Temporary circumvention of a fault in the software without accessing the code (source code or executable code).