

# **General Terms and Conditions - Contract for Software Maintenance** **("GTC-SM")**

the  
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hereafter referred to as the **"Company"**.

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## § 1 Fundamental

### § 1.1 Scope of application

- § 1.1.1 These General Terms and Conditions- Contract for Software Maintenance ("**GTC-SM**") apply to all contracts for the maintenance of standard software (hereafter "**Maintenance Services**") concluded between the Company and their contractual partner.
- § 1.1.2 The area of validity of the GTC-SM is limited to the B2B sector and is only applicable to contracts with consumers to the extent that the GTC-SM can be used to interpret the respective individual contract within the framework of the statutory provisions.
- § 1.1.3 Unless otherwise stated, references in this contract always refer to the GTC-SM.
- § 1.1.4 In addition, the General Terms and Conditions of the Company General Part ("**GTC-GP**") as well as the respective additionally relevant pertinent GTC shall apply.

## § 2 Subject matter, scope of services

### § 2.1 Contractual software

- § 2.1.1 The contractual software ("**Contractual Software**") consists of the OMNITRACKER components of the OMNITRACKER platform selected by the Customer in accordance with § 2.1.3 and the selected OMNITRACKER applications in accordance with § 2.1.4, unless otherwise expressly agreed in the contract (e.g. individual software).
- § 2.1.2 "**OMNITRACKER**" consists of the OMNITRACKER platform and the OMNITRACKER applications.
- § 2.1.3 The "**OMNITRACKER Platform**" includes all components listed in the respective current price list of the Company under the article groups "**OMNITRACKER License Packages**", "**OMNITRACKER Individual Licensing**", "**OMNITRACKER Interface Bus**" and "**Third-party Licenses**".
- § 2.1.4 The "**OMNITRACKER Applications**" include all components listed in the current price list of the Company under the article group "OMNITRACKER Applications" in the unchanged version provided by the Company ("**Standard Applications**").

### § 2.2 Subject of contract, product certificate

- § 2.2.1 The subject matter of this contract for maintenance ("**Contract for Software Maintenance**") or in short "**Maintenance Contract**") is the provision of maintenance services for the contractual software by the Company.
- § 2.2.2 The contract for software maintenance covers in principle always the complete inventory of the contractual software shown in the respective product certificate, unless otherwise expressly agreed in writing. A change in the product certificate automatically leads to an adjustment of this maintenance contract, which means that an extension of the contractual software shown in the product certificate automatically requires an extension of the maintenance contract, unless otherwise expressly agreed. Accordingly, the contract for software maintenance is always directly linked to the respective contract for the contractual software with regard to its scope of performance. This means that a termination of this contract is only possible for the entire maintenance services of the associated contract.
- § 2.2.3 The scope of the maintenance contract to be remunerated in accordance with § 6 shall be governed by § 2.3 and § 2.4.
- § 2.2.4 Against separate remuneration, the customer may also order additional services in accordance with § 3.
- § 2.2.5 During the term of the maintenance contract relating to OMNITRACKER ("**OMNITRACKER Maintenance Contract**"), the scope of services shall include the participation of selected employees of the customer in the annual OMNITRACKER information events.
- § 2.2.6 The product certificate or the offer that becomes subject of the contract, specifies the start and end of the contract, service times and communication channels, the customer's contact person and other service parameters.

### § 2.3 Software support

- § 2.3.1 The Company shall process the errors of the contractual software and the provided user documentation reproducible within the test environment of the Company due to error messages of the customer within the period stated in the service parameters. In doing so, the Company shall use its best endeavors either to inform the customer how the error can be eliminated or when this will be done (in particular by means of an update) or to inform the customer of measures to circumvent or temporarily bypass errors.
- § 2.3.2 A defect exists if the contractual software does not provide the agreed services/functions when used in accordance with the contract (in the case of OMNITRACKER from the user documentation, taking into account the document 'OMNITRACKER System Requirements' in its respective valid version-dependent form) or from the performance description of the individual software.

- § 2.3.3 The software support is provided exclusively for the contractual software and when concluding an OMNITRACKER Maintenance Contract for the versions of the OMNITRACKER platform provided within the scope of the update subscription (see § 2.4).
- § 2.3.4 The software support as part of the OMNITRACKER Maintenance Contract additionally includes answering the customer's questions regarding the mechanisms and procedures of the OMNITRACKER platform provided and documented by the Company for the customization of the OMNITRACKER applications up to the maximum number specified in the product certificate.
- § 2.3.5 In case of urgent processing, § 3.9 shall apply.

## **§ 2.4 Update subscription (only applies to OMNITRACKER Maintenance Contract)**

- § 2.4.1 The version scheme, i.e. the numbering of the versions of the OMNITRACKER platform, is set out in Annex 1 to these GTC.
- § 2.4.2 The update subscription includes the provision of all modifications ("update" versions) and new versions of the OMNITRACKER platform of at least the same functionality ("minor" and "major" versions) on the agreed data carrier or as download from the internet portal of the Company after general release by the Company.
- § 2.4.3 As a rule, the Company shall provide one minor version per quarter and one major version per calendar year. The periods may deviate from the rule as required. § 2.4.3 does not imply any claim to any time periods.
- § 2.4.4 The customer shall receive the user documentation associated with each version update in electronic and printable form.
- § 2.4.5 The Company guarantees release compatibility of the OMNITRACKER platform in such a way that in case of a version update of the OMNITRACKER platform all functions of earlier versions of the OMNITRACKER platform described in the user documentation and thus the functionality of all OMNITRACKER applications (standard applications, applications newly created by the Company or the customer or third parties, applications adapted by the Company or the customer or third parties) remain compatible, i.e. functionally identical. Excluded from this are such components of the OMNITRACKER platform that are permanently withdrawn from the product range by the Company within the scope of its product strategy or no longer gets supported/updated.
- § 2.4.6 Bug fixes within the OMNITRACKER platform as well as changes to the user interface, for example in the form of adjustments to improve manageability (usability), visualization or similar, do not constitute a breach of release compatibility. This also applies if the functions can only be maintained by making additional adjustments. A claim for the restoration of an error is excluded.
- § 2.4.7 With regard to the third-party licenses (article group "**Third-party Licenses**" in the respective current price list of the Company), the assurance of release compatibility shall only apply to the products named in the document "OMNITRACKER System Requirements", in its respective valid version-dependent version, and the versions specified therein. This shall only apply as long as the respective product is actually offered by the respective manufacturer or support is provided by the manufacturer.

A version update is carried out automatically as part of the program installation of the version update. A prerequisite for release compatibility is that only the features described in the user documentation are used in the adaptation ("**Customizing**").

## **§ 2.5 Rights of use**

- § 2.5.1 The customer shall receive a right of use for the versions and documentations delivered by the Company within the scope of § 2.3 and § 2.4 for the intended use in accordance with the contractual conditions underlying the transfer of the respective contractual software, unless the software delivered within the scope of the maintenance is accompanied by separate transfer conditions.

## **§ 3 Services to remunerated separately**

### **§ 3.1 Scope/Remuneration**

- § 3.1.1 Against additional remuneration, the customer may make use of maintenance services (see § 3.2 to § 3.8.), which go beyond the scope of services set out in § 2, and which are not covered by the flat-rate maintenance remuneration pursuant to § 6. These are to be agreed and remunerated separately. They shall be assessed in accordance with the separate relevant contractual provisions of the Company.

### **§ 3.2 Consulting services**

- § 3.2.1 Assistance with simple, straightforward questions, e.g. with regard to errors that do not fall under § 2.3 and are not attributable to the contractual software, but occur, for example, due to operating and/or installation errors on the part of the customer or are based on faulty behavior of third-party systems connected via interfaces.
- § 3.2.2 Answering questions from the customer - as described in § 2.3.4 - that exceed the maximum number specified in the product certificate.

### **§ 3.3 Adaption of OMNITRACKER applications**

§ 3.3.1 Adaption to new or changing requirements of the customer.

### § 3.4 Installation of the contractual software

§ 3.4.1 Answering questions of the customer and consulting services during the installation of the contractual software provided by the Company.

### § 3.5 Maintenance at the customer's premises

§ 3.5.1 Maintenance services which are provided at the customer's premises.

### § 3.6 Trainings

§ 3.6.1 Implementation of trainings.

### § 3.7 External influences

§ 3.7.1 Elimination of disturbances and errors caused by force, intent or gross negligence on the part of the customer.

### § 3.8 New modules

§ 3.8.1 New stand-alone programs or program parts which the Company distributes after the transfer of the contractual software, and which are listed in the then valid price list of the Company.

### § 3.9 Urgent processing of support requests

§ 3.9.1 In the event of unplanned ad-hoc calls for short-term tasks which are to be processed immediately at the request of the contracting party and which are also processed immediately by the Company ("**Urgent Processing**"), the duration shall be calculated per two working hours or part thereof per call, unless there is an express agreement to the contrary. This processing is not covered by this maintenance contract. This takes into account the additional workload incurred by the Company. Short-term tasks which are within the sphere of responsibility of the Company and lead to several minimum call-offs or invoiceable planned project control activities (e.g. meeting participations) shall not be taken into account here.

## § 4 Participation of the customer/ordering party

### § 4.1 Use of the current versions of the OMNITRACKER platform (only applies to OMNITRACKER Maintenance Contract)

The Company's duty as part of the OMNITRACKER Maintenance Contract to provide the contractual maintenance services for the OMNITRACKER platform relates to ("**Maintained Versions**")

- (a) the current version (identified by the current update version of the current "**Minor Version**" of the current "**Major Version**") and
- (b) the current update version of the minor version preceding (a)
- (c) well as further to the respective current minor version in its respective current update version of the preceding major version.

Example:

Current version: 11.2.200

Maintained versions: (a) 11.2.200, (b) 11.1.200, as well as (c) 10.3.100

§ 4.1.1 If the customer still has an older version of the OMNITRACKER platform installed than one of the versions listed under § 4.1.1, the Company may refuse the service or, at its option, perform the maintenance service against payment of the associated additional expenses, unless the adoption of one of the current versions is unreasonable for the customer. In the event of a disagreement, the customer shall have to prove the unreasonableness.

§ 4.1.2 The Customer shall immediately install, examine and test any new software provided to it and shall immediately report any defects. If it is unreasonable to expect the Customer to accept the new software, the Customer may continue to use the version currently in use and will only be required to 'migrate' to the next version after a maximum of three (3) months.

§ 4.1.3 The customer shall only be obliged to deploy and use one of the versions listed under § 4.1.1, as far as reasonable, to the extent that the maintained versions are not afflicted with errors which are not insignificant and which the Company does not remedy at short notice. Otherwise, the customer shall be entitled to leave the OMNITRACKER platform on the currently operating version and to use it until the Company demonstrably makes available an essentially error-free, current version.

### § 4.2 Provision free of charge

§ 4.2.1 The customer shall ensure that all cooperation services of the customer or its agents required for the performance of the maintenance are provided in due time and free of charge for the Company, e.g.

- Employee information

- Provision of operating logbook/records/hardcopies
- Provision of test/real data for testing
- Provision of machines/computer capacity
- Possible monitoring through common operating system and/or database monitoring programs
- Backing up/copying program states of the application level and the databases
- (Remote) online access to the IT systems on which the Contractual Software is installed.

#### **§ 4.3 Qualification of participation**

- § 4.3.1 The duty to assist is the main performance duty of the customer. If the customer does not comply with their duty to assist or does not comply with it in due time and sufficiently, the Company shall be released from its duty to provide the maintenance services.

#### **§ 4.4 Error reports**

- § 4.4.1 The customer shall immediately notify the Company in writing of any defects or errors in an easily comprehensible and detailed form, stating all information relevant for the detection and analysis of the error, and shall record the use of the contractual software and any special incidents occurring in a suitable manner. If the first notification of a defect is made by telephone, the customer shall submit the error message in the form of sentence 1 of this paragraph. In particular, the work steps, which led to the occurrence of the error, the form of appearance and the effects of the error, shall be stated.
- § 4.4.2 A recording can only be considered suitable if it is made in a manner that is easily comprehensible for third parties or the Company, usually via the company's portal, and in a common file format (Word/Excel/PDF or similar).
- § 4.4.3 Reports of any errors that are not easily comprehensible for an uninvolved third party or the Company shall not be considered as error reports.
- § 4.4.4 The customer shall provide all necessary documents and information required by the Company for error diagnosis and correction as well as access to the premises, machines and to the contractual software also by remote access via WAN during the Company's service times (see product certificate).

#### **§ 4.5 Assistance, troubleshooting**

- § 4.5.1 The customer shall support the Company to the best of their endeavors in the search for the cause of the error. Upon the Company's request, it shall keep the defective software, as well as the associated data files available, and if necessary, send them to the Company without delay.

#### **§ 4.6 Personnel etc.**

- § 4.6.1 The customer shall, if necessary, provide suitable personnel with system administration and configuration knowledge (usually acquired through appropriate training by the Company) and computing time at its premises if the Company performs the maintenance services at the customer's premises. The customer shall ensure that the employees commissioned by the Company for the performance of the software maintenance services are granted free access to the respective systems and the software at the agreed time.

#### **§ 4.7 Contact person**

- § 4.7.1 The customer shall ensure that the Company's Service Desk is only used by a suitable employee. This employee must subsequently also be available for support during the performance of maintenance services. Upon request of the Company, the customer shall exercise the utilization of the Company Service Desk exclusively through two suitable employees to be nominated by the customer.
- § 4.7.2 The Company is entitled to reject insufficiently qualified employees as contact persons, in particular if otherwise avoidable support requests are made.
- § 4.7.3 An employee is suitable if the employee possesses the necessary knowledge and skills to use the contractual software within the scope of its contractual possibilities of use in a fully comprehensive and error-free manner without assistance by the Company and has comprehensive system administration and configuration skills, regarding the Contractual Software ("**Suitable Employee**"). The suitability of the employees can be achieved by a successful participation in the corresponding trainings of the Company (see § 6).

#### **§ 4.8 Remote data transmission/Remote activities**

- § 4.8.1 Insofar as the Company provides maintenance services by means of remote data transmission techniques, the customer shall provide and maintain at its own expense the devices, equipment and programs within the customer's sphere of responsibility that are suitable for the remote access by the Company free of charge and ready for operation.

#### **§ 4.9 Installing new versions (only applies to OMNITRACKER Maintenance Contract)**

- § 4.9.1 If customers receive a new version of the OMNITRACKER platform from the Company, it shall be installed by themselves without delay. If the Company provides the Customer with the information necessary for the

rectification and avoidance of faults at short notice via the hotline/service desk (see § 2.3), the Customer shall implement this information in good time.

#### **§ 4.10 Carrying the hardware and software environment**

- § 4.10.1 The customer shall, to the extent necessary, carry out adaptations of the hardware and software system environment in a timely manner at their own expenses. This includes, in particular, new versions of the operating system or other necessary third-party software.
- § 4.10.2 In the case of an OMNITRACKER Maintenance Contract, the document "OMNITRACKER System Requirements" - in its respectively valid version-dependent version - possibly changed requirements of the hardware and software environment for new versions of the contractual software are specified.

### **§ 5 Running time of contract, termination**

#### **§ 5.1 Running time**

- § 5.1.1 The running time of this contract shall, unless otherwise expressly agreed in writing, commence with the provision of the contractual software by the Company and shall be at least twelve (12) months ("Initial Contract Running Time").

#### **§ 5.2 Extension of the contractual term**

- § 5.2.1 The contract shall be automatically extended by the term pursuant to § 5.1 if it is not terminated by one of the contractual partners. With a notice period of 3 months to the end of the contractual term.
- § 5.2.2 Notices of termination must be sent by registered mail/return receipt.

#### **§ 5.3 Termination for good cause**

- § 5.3.1 The right of either party to terminate the contract without notice for good cause remains unaffected.
- § 5.3.2 The Company shall be entitled to terminate the contract without notice in particular if the customer is more than one month in arrears with payment of the remuneration.

### **§ 6 Remuneration**

#### **§ 6.1 Amount**

- § 6.1.1 The amount of the remuneration results from the contractual agreement and the respective current price list of the Company. Daily rates apply within the scope of the usual business and office hours.

#### **§ 6.2 Annual due date**

- § 6.2.1 Unless otherwise arranged, the agreed remuneration as well as the applicable statutory value-added tax and other statutory levies shall be due and payable in advance as an annual flat rate for 12 months.

#### **§ 6.3 Contact person**

- § 6.3.1 Maintenance contract invoices, product certificates, as well as comparable documents may also be sent by the Company by email. The customer shall name an authorized contact person to the Company for this purpose. In case of a change of the contact person or change of the contact data, the Company shall be informed immediately and verifiable. If the customer culpably fails to do so, any resulting disadvantages of the customer shall be borne exclusively by the customer.
- § 6.3.2 Explicit reference is made to § 2.1 GTC-GP.

#### **§ 6.4 Price adjustment**

- § 6.4.1 The Company is entitled to adjust the maintenance remuneration at the beginning of a contract extension according to its current price list. The Company shall notify the customer of a change of remuneration at least three (3) months in advance in writing. (Also by email to the contact person named in § 6.3.1).
- § 6.4.2 In the event of an increase in the maintenance fee by more than fifteen (15) percent, which is not caused by a change in the license's portfolio but by a price increase, the customer is entitled to terminate the maintenance contract with effect from the end of the contractual year within a period of one month after receipt of the request for increase.
- § 6.4.3 Irrespective of § 6.4.1 of this contract, § 1.4 GTC-GP shall apply.

#### **§ 6.5 Additional services to be remunerated**

- § 6.5.1 Additional services of the Company (see in this respect in particular § 3) shall be remunerated by the customer, unless otherwise agreed, separately according to the Company's price list valid at the time of the performance of the service, as a rule according to the time spent and against additional reimbursement of expenses incurred such as travel costs/expenses. The Company's invoices for this are due immediately without deduction.

#### **§ 6.6 Work at the customer's premises**

§ 6.6.1 In the exceptional case, the Company's work is carried out at the customer's premises after consultation with the customer, travel costs and expenses which the Company has to pay its employees working with the scope of these services according to the Company's respective travel expense regulations shall be charged to the customer.

§ 6.6.2 In this case, the travel times for the outward and return journey shall be remunerated at the hourly rate or daily rate shown for the corresponding employee in the Company's price list valid at the time of the performance of the services.

§ 6.6.3 If the above-mentioned price list shows a separate hourly rate (e.g. for absences), this shall be considered agreed.

## **§ 6.7 Unauthorized error reports, requests for performance**

§ 6.7.1 If the Company can prove in the case of reported errors or claimed maintenance services that no case of maintenance has occurred, the expenses for the error search as well as the services of the Company for the error removal shall be borne by the customer. The calculation of the expenses shall be based on the price list of the Company valid at the time of the performance of the service.

## **§ 7 Material defect and legal deficiencies**

### **§ 7.1 Material defect**

§ 7.1.1 Material defects shall be remedied during the term of this contract of software maintenance within the scope of the remedying of defects, pursuant to § 2.

§ 7.1.2 Insofar as the Company provides the customer with software for a limited time within the scope of this contract, the liability irrespective of fault or defects already existing at the time of the conclusion of the contract is expressly excluded.

### **§ 7.2 Legal deficiency**

§ 7.2.1 A "Legal Deficiency" exists if the rights to a maintenance service required for the contractual use could not be effectively granted to the customer.

§ 7.2.2 If a third party asserts the infringement of proprietary rights against the customer, due to the use of the maintenance services, the customer shall inform the Company thereof without delay and leave the defense against these claims to the Company as far as possible.

§ 7.2.3 In doing so, the customer shall provide the Company with all reasonable support. In particular, the customer shall bear all the expenses and costs resulting therefrom which could have been avoided by an immediate notification.

§ 7.2.4 To the extent that third party rights are violated, the Company may, at its own discretion, remedy the violation by

- a) obtaining from the person entitled to dispose of the remedial statue a right of use for the benefit of the customer which is sufficient for the purposes of this contract, or
- b) modifying the defective software without affecting its function or only with effects acceptable to the customer the contractual use of which does not infringe any proprietary rights, or
- c) delivering a new program version, the use of which in accordance with the contract, does not violate any third-party proprietary rights.

### **§ 7.3 Reduction or termination with damages**

§ 7.3.1 If the remedy of the material defect or legal deficiency by the Company is not successful within a reasonable period of time, the customer is entitled to set the Company a final grace period with the threat to either reduce the maintenance remuneration or to terminate the contract without notice after the unsuccessful expiry of the grace period. Such extraordinary termination shall only be considered in the event of a material defect. In the event of such a justified extraordinary termination due to a material defect that has not been remedied, the relevant sections of the GTC-GP shall apply to the limitation of the number of damages.

## Annex 1

The version scheme, i.e. the numbering of the versions of the OMNITRACKER platform, is structured according to the following 3-level scheme:

<major-version-no.> "." <minor-version-no.> "." <update-version-no.>

Example:

11.2.200

major version-no: 11

minor version-no.: 2

update version-no.: 200

**“major versions”**

differ from each other by significant extensions and improvements of the scope of services. As a rule, new function groups and interfaces have been realized and/or new technologies introduced.

**“minor versions”**

Differ from each other through extensions and improvements.

**“update versions”**

are error-corrected versions of the same scope of services, i.e. a major or minor version.