

Contract Terms of Audicon GmbH for the Maintenance of Software and Support Services ("General Terms and Conditions Maintenance")

I. Scope of application

The following contract terms of Audicon GmbH ("Audicon") for the maintenance of software ("General Terms and Conditions for Maintenance") apply to all contractual relations to customers in connection with the provision of software maintenance and support services and are an integral part of the contract unless otherwise agreed in writing in an individual agreement between Audicon and the customer. The General Terms and Conditions for Maintenance supplement Audicon's General Terms and Conditions and Audicon's Terms of Contract for the Transfer of Software ("General Terms and Conditions for Software"), both of which are an integral part of the contract in addition to the General Terms and Conditions for Maintenance.

II. Subject matter of the contract

2.1 Audicon shall assume the maintenance of the software programs described in more detail in the order confirmation. Unless otherwise agreed, Audicon shall perform the following maintenance services for these software programs:

- Brief telephone consulting and support for all questions related to operation, installation and other application support ("Support");
- Supply of the respective program version currently marketed. By Audicon

2.2 The scope of performance of the above mentioned maintenance services is described in detail below. All other services not indicated below shall not be owed by Audicon, but have to be ordered and paid for separately.

2.3 Audicon shall endeavor to adapt the software programs to be maintained to changing legal regulations within the framework of Audicon's operational and economic capabilities and within a reasonable period of time. This shall not apply in the case that such adaptation involves unreasonable work for Audicon. In such a case Audicon shall effect the adaptation only in return for appropriate additional remuneration.

III. Support

3.1 Audicon shall perform telephone and/or electronic brief consulting and support services related to all questions regarding operation, installation, application problems or other cases of difficulties in connection with program flows of the software programs to be maintained. The brief telephone consulting service is available to the customer during Audicon's normal working hours outside the statutory public holidays from Monday to Friday from 9 am to 12 noon and from 2 to 5 pm.

3.2 Consulting and/or support in accordance with the above provision is any problem-related answer on the part of Audicon to the description of a software-related problem of the customer in connection with the software programs described in more detail in the order confirmation. The reply to the respective inquiry can be effected by telephone, email, fax or also in writing according to Audicon's choice.

IV. Supply of current program versions

4.1 Audicon shall provide the customer with all new program versions of the software programs to be maintained to the extent they are currently marketed by Audicon and are available. This shall not apply to extensions of the software programs to be maintained, which Audicon offers and markets separately as a new and independent product, and to new developments of the software programs with identical or similar functions on a different technological base.

4.2 The new program versions are transferred – as far as is possible and desired by the customer – on a data medium or via remote data transmission (e.g. download from the Internet). If Audicon transfers the new program version to the customer via remote data transmission, Audicon shall endeavor to ensure the availability of the contractual software on a server for downloading by the customer. The functional scope of the new version is based in each case on the documentation provided, and/or on other separate information from Audicon.

V. Miscellaneous services

5.1 At the customer's request, Audicon shall perform further services which are connected with the software programs to be maintained, but which are not included in the services described in the previous subsections, in return for an additional remuneration to be agreed upon. This shall apply in particular to the following services to the extent they cannot be performed by way of brief telephone consulting and support ("Support"):

- individual elimination and analysis of defects in the software programs to be maintained;
- local services by Audicon at the customer's site, in particular work on the customer's IT system;
- services in connection with software programs not covered by this contract;
- services that are performed outside Audicon's normal working hours at the request of the customer;
- services that are necessary due to improper handling of the maintained software and/or breaches of obligations on the part of the customer, such as failure to comply with user manuals, irrespective of whether they are due to the customer, his vicarious agents or other persons who are not authorized by Audicon;
- services that become necessary due to force majeure or other circumstances for which Audicon is not responsible;
- services that are necessary in connection with the installation of a new program version purchased by the customer, especially instruction and training regarding these software programs;
- services resulting from altered or new requirements of the customer: this includes in particular advising the customer on the adaptation and creation of application software and/or on general IT-related questions that are not related to the software programs to be maintained;
- updating of earlier customer-specific adaptations, adjustments and extensions that are necessary for their preservation after any change of the version.

5.2 Audicon shall not be required to perform services that are not part of the subject matter of this contract, in particular the above-mentioned services. However, Audicon shall endeavor within the framework of its operational capabilities to support the customer to the extent necessary for reasonable economic use of the software programs being maintained.

VI. Customer's obligations to cooperate

6.1 The customer shall support Audicon in every respect in the performance of the contractual maintenance services free of charge. In particular, the customer shall

- appoint a responsible party in writing during the term of the contract who possesses all decision-making powers and authorizations necessary for the purposes of implementation of this agreement;
- input the new program versions received from Audicon according to Audicon's instructions;
- keep all data used or obtained in connection with the software programs being maintained and enabling reconstruction of lost data at a reasonable expense in machine-readable form as a backup copy;
- keep new versions of the operating system, database or other third party software required for application of the software programs available at the customer's expense to the extent this is necessary for the creation and/or use of a new program version of the software programs to be maintained,
- provide suitable and trained personnel for the installation and startup of new program versions.

6.2 The above-mentioned obligations to cooperate are major contractual duties. If the customer violates his obligations to cooperate, Audicon shall not be required to perform the contractual services. In the event of repeated or serious breach of obligations, Audicon shall have the right to terminate the contract by giving two weeks' notice to the end of the month.. The contractual relationship ends at the end of the following month.

VII. Payment, invoicing

7.1 The amount of the payment to be made by the customer for the maintenance services is based on the order confirmation and/or Audicon's then prevailing current price list. All prices are quoted net, without any deductions and exclusive of the statutory value added tax.

7.2 Audicon has the right to adjust the fee rates for performance of the maintenance services to the competitive and business management conditions and requirements. Mutatis mutandis, Audicon shall be entitled to adjust the fee rates for maintenance at the beginning of a quarterly year by prior notification in writing observing a period of three months. Such adjustment shall be permissible only after 12 months at the earliest counted from the conclusion of the maintenance contract, and it must not exceed the remuneration of the preceding 12-months-period by more than 10 %. In the event that the increase amounts to more than 7.5 % of the remuneration of the preceding 12-months-period, the customer may terminate the Maintenance Contract

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by a written notice observing a period of three months from the date of such increase. A change in the current fees must be reported to the customer in writing three months prior to its becoming effective. The customer shall by this notification be given an extraordinary right of termination at the time of the change in fee rates; the customer shall announce the termination to Audicon in writing four weeks at the latest after having received the notification of a change in the fee rates.

7.3 If errors occur during the warranty period of a software program transferred and to be maintained by Audicon and this error falls under Audicon’s warranty, the services performed within the framework of this maintenance agreement in connection with the elimination of the error shall not be charged to the customer or shall be refunded on a pro rata basis to such extent as the right to subsequent performance in accordance with the warranty is expressly referred to by the customer in his request for elimination of the error.

7.4 Invoicing shall be carried out in one amount as of the first day of the following month after conclusion of the maintenance agreement for the remaining term until 31 December of the calendar year. Thereafter further invoicing shall be carried out as of 1st January of a calendar year and in one amount. Alternatively invoicing can also be carried out in partial amounts on a monthly basis, assuming authorization for direct debiting.

7.5 If Support services are reimbursed according to the time required, invoicing for making use of the “Support” shall be carried out as of the end of a calendar month in each case and shall contain the following information: name of the caller, date, time, problem, solution, time required in minutes, billed time.

VIII. Defective performance

8.1 To the extent that Audicon is required to supply new program versions to the customer, the warranty provisions stipulated in the Terms and Conditions for Software shall apply mutatis mutandis in case of defectiveness of these software programs.

8.2 For the consulting and support services provided within the framework of the “Support”, Audicon shall be liable for punctuality and proper performance, but not for the economic or other performance success targeted at by the customer.

IX. Contractual period, termination

9.1 The Software Lease Contract shall have a duration until the end of the year following the execution of the Contract and it shall be extended from year to year for another year unless notice of termination is given in writing by posted letter three months’ prior to

the lapse of the initial contract term or of the extended contract term respectively. A transmission of the notice of termination by telecommunication services or electronic means (such as e.g. by facsimile transmission or email) shall not be sufficient to comply with the aforementioned written form requirement. The termination by notice shall become effective only when confirmed by Audicon.

9.2 The right of using the software that is granted to the customer shall not be affected by a termination of the maintenance agreement.

9.3 The right of extraordinary termination for compelling reasons shall not be affected. In particular Audicon shall have the right of extraordinary termination if the customer is in default of payment of the fee by more than two (2) months.

X. Rights of use

10.1 Audicon shall grant the customer the rights of use of the new program versions transferred within the framework of this maintenance agreement to the extent that they exist with respect to the software programs with which they are properly used or which are to be replaced by them. The Terms and Conditions for Software shall apply mutatis mutandis.

10.2 The right of use of software programs that are technically replaced by the new program versions shall expire within two weeks after the customer productively utilizes the supplied program versions, but at the latest one calendar month after receipt of the supplied program versions by the customer. The customer has the right to make one copy of the technically replaced software programs in each case for archiving purposes.

XI. Validity of the General Terms and Conditions and the General Terms and Conditions for Software

The general provisions regarding e.g. the conclusion of the contract, delivery, prices and terms of payment, retention of title and reservation of rights, liability, period of limitation, place of jurisdiction, etc. contained in Audicon’s General Terms and Conditions shall apply mutatis mutandis to contractual relationships within the framework of performance of maintenance services unless these General Terms and Conditions Maintenance contain any diverging provisions. If new program versions are transferred to the customer within the framework of the maintenance services, Audicon’s Contract Terms for the Transfer of Software (General Terms and Conditions for Software) shall apply mutatis mutandis.