

General terms and conditions of EasternGraphics GmbH for software maintenance: Maintenance T&C (Updated 2010-12-15)

I. Applicability

EasternGraphics GmbH's terms and conditions concerning maintenance ("Maintenance T&C" or "MT&C") are applicable to all contractual relationships with customers arising from or associated with rental of software from EasternGraphics GmbH ("EGR") and are to be understood as an integral element of the contract insofar as nothing to the contrary has been individually agreed in writing between EGR and the customer. The MT&C are complementary to the GT&C (general terms and conditions), which are themselves, besides the MT&C, an integral part of any rental contract.

II. Subject of Contract

(1) EGR shall undertake the maintenance of the software indicated in the price quotation, confirmation of order and/or software maintenance contract (as appropriate). Unless otherwise agreed, EGR's maintenance services in respect of this software shall be as follows:

- telephone and/or electronic consultations on questions concerning operation, installation and other application support;
- supply of the version of the relevant program (updates) currently being marketed,
- specific removal of defects from the software.

(2) The scope of the above service is described in detail below. EGR shall be obliged to supply no other services than those which now follow.

(3) EGR shall provide maintenance only for the software being used by the customer in its current version: i.e., the customer shall be obliged to install the update supplied by EGR within a reasonable period. If the customer is using a version of the program which is not current, EGR shall carry out an inspection in return for separate payment by the customer and shall update the software in return for separate payment, the payment being dependent on the number of updates not made by the customer. If this update is infeasible with reasonable effort and time, EGR shall be under no obligation to provide maintenance for the existing software.

(4) EGR's maintenance services shall be provided only if the customer has installed the software on a system environment approved by EGR for that software.

(5) EGR's duty of maintenance shall furthermore require the software to have been installed on an operating system which is being supported in general by the manufacturer of the operating system at the time when the defect is reported to EGR (Any individual maintenance agreements between the manufacturer of the operating system and the customer for which the period exceeds the general support period shall be disregarded.). Should this not be the case and if EGR remedies the defect nonetheless, the customer shall bear any costs arising on that account. The parties to the contract shall furthermore have the right of extraordinary termination of the software maintenance contract if the operating system on which the customer has installed the software is no longer being maintained by its manufacturer.

Clause VII. (7) of these Terms and Conditions shall be unaffected.

III. Brief consultations by telephone and/or electronic systems (e.g. email)

(1) EGR shall provide brief consultations by telephone or electronic means and support on all questions concerning operation, installation, application problems or other cases of difficulty associated with the running of the software being maintained. The telephone or electronic consultations shall be available to the customer during EGR's normal hours of business, 9am to 5pm on Monday to Thursday and from 9am to 2pm on Friday excepting German public holidays.

(2) In the foregoing, advice or support shall be every problem-related response of EGR to the customer's representation of a software problem which is associated with the software being maintained. The response to the queries received shall be by telephone, email, fax or otherwise in writing as EGR chooses.

(3) Not included in the contractually agreed performance of service are telephone or electronic short consultations on the use of the software which are equivalent to a user training session or on questions which could have been answered by the reading of the user handbook or the other documentation.

(4) Repeated queries related to incorrect use of the software and normally covered by training, and, also, questions on the internal organization of the enterprise shall be charged for by EGR in accordance with its current pricelist for services.

IV. Supply of current program versions (updates)

(1) EGR shall provide the customer with all new versions (updates) of the software to be maintained insofar as such are being currently marketed by EGR and are available. The foregoing shall not apply to extensions of the software to be maintained which EGR is launching and marketing as a new and independent product nor to new developments of the software with the same or similar functions (upgrades).

(2) The transfer of the new version shall take place either on a storage medium or by remote data transfer (such as download from the Internet), depending on feasibility and/or the customer's wishes.

V. Specific removal of defects from the software

(1) EGR shall remove within a reasonable period any defects from the software of which EGR is informed by the customer or otherwise becomes aware. Insofar as the customer still has claims under guarantee by reason of the software transfer or software development contract concluded with EGR the rights of the customer shall be principally determined according to the terms of the software transfer or development contract if defects arise, independently of whether the defect has first arisen before or after conclusion of the maintenance contract.

(2) It shall be prerequisite to this service that the relevant software has been installed by the customer in the current version being published or approved by EGR.

(3) EGR shall remove any defect by appropriate measures at its own discretion. The removal of defects on the customer's premises shall take place only and to the extent that no other measure promises to be successful.

(4) EGR shall have no liability for the correctness of data from third parties to be found in the software or for any defects resulting therefrom.

(5) Should it transpire that a defect notified by the customer does not in fact exist or is not caused by the software, the customer shall pay EGR for the effort involved in analysis and other work in accordance with calculations based on the current price list of EGR for the tasks in question.

VI. Other services

EGR shall, if so requested by the customer, perform, in the context of and for payment agreed in a contract to be concluded separately, further services in respect of the software being maintained which are not included in the services named in the clauses above. This shall apply in particular to the following services:

- installation of the software;
- creation of data;
- instruction and training of employees;
- customization of the software to the individual wishes and needs of the customer where this is not a question of remedying defects;
- performance of services in relation to software not included in the present contract;
- extensive consultancy on the customer's questions relating to perceived disruption or defect which is not due to the software but arises from because of faulty operation or other outside influence.

VII. Customer's duty of cooperation

(1) The customer shall support EGR in every way during the fulfilment of the contractual maintenance services. By this shall be understood in particular:

- the naming of an officer and where appropriate a deputy who shall have authority and be empowered to make all decisions necessary to the fulfilment of the contract.
- Insofar as services are rendered by means of remote data transfer techniques, the customer shall at his or her own cost make suitable equipment and programs available and ready for operation and shall maintain these.
- In the case of work being necessary at the customer's premises, the customer shall give EGR and its officers access to the rooms, machinery and software at least during normal office hours, if possible by prior arrangement, and shall make available the necessary computer time.
- Insofar as it is unclear which system component is responsible for faulty behavior, the customer shall first carry out an analysis of the system environment together with EGR and, if necessary, shall at his or her own cost involve commercial third parties in possession of the know-how necessary to the system environment.
- During the work, the customer shall ensure a competent employee is constantly on hand who is able to give EGR information concerning the overall system on the customer's premises, the use of the software and the defect claimed and who can carry out test runs.
- The customer shall, after instruction by EGR, install the new program versions received from EGR.
- Insofar as such is necessary for the creation and/or use of a new version of the software to be maintained, the customer shall at his or her own cost make available and ready for operation new versions of the operating system, the database or other resources required for the use of the software.
- Any defects arising shall be documented by the customer in a manner comprehensible to EGR and shall be reported to EGR immediately they are discovered; where the communication is by telephone it must be duplicated afterwards in writing or by email. It must detail the precise circumstances of the defect's arising, its effects and possible causes.

(2) The duty of cooperation described above shall constitute a substantial contractual obligation. If the customer is in breach of his or her duty of cooperation, EGR shall be under no obligation to provide its services. EGR shall have the right to terminate the software maintenance contract at the end of a month with two weeks' notice if the customer is in repeated or serious breach of obligation.

VIII. Payment

(1) Payment for the maintenance services named in Clause II. (1) shall, for the first year, be ½ for the telephone and/or electronic brief consultations and support on questions concerning operation, installation and other application support, and ½ for the provision of updates being currently marketed by EGR. From the beginning of the second year of the contract, one third of the charge will be for telephone and/or electronic consultations on questions concerning operation, installation and other application support, one third will be for provision of updates being currently marketed by EGR, and one third will be for the individual remedy of defects in the software.

(2) EGR shall have the right to change the prices for maintenance services once per year. A rise in prices shall be notified in writing to the customer three months before it is to take effect. The customer shall be granted with the notification the right of extraordinary termination at the time when the price rise is to take effect. (Ann.: "Zeitpunkt zu" statt "in") In this case, the customer shall be under an

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obligation to give EGR written notice no later than four weeks after notification of the change in prices.

IX. Liability for defects

(1) Insofar as EGR is under an obligation to supply updates, the clauses contained in the T&C for the transfer of software (SoftT&C) shall apply concerning liability for material defects.

(2) EGR shall remedy deficiencies in maintenance on request by the customer within a reasonable period. If it should not be possible to remedy a defect, EGR shall be permitted to offer the customer an alternative solution.

(3) If EGR is unable to fulfil its obligation to remedy a defect within the set period, the customer shall have the right either to make a reasonable reduction in payment or to withdraw from the contract at his or her discretion.

(4) Any claims by the customer in respect of defects shall lapse unless made within a year of transfer of risk.

X Duration of contract, cancellation

(1) Unless otherwise specifically agreed in the software maintenance contract, the contract shall begin on the first day of the month following the transfer of the software and shall run indefinitely. Each party to the contract may at the end of a full year give 3 months' notice of termination of the contract, but under no circumstances before 12 months have elapsed.

(2) Notice shall be given in writing.

(3) The right of use of the software granted to the customer shall be unaffected by termination of the maintenance contract.

(4) The right of extraordinary termination of contract for compelling reasons shall remain unaffected. EGR shall have the right to extraordinary termination if the customer is more than two months in arrears with payments.

XI. Rights of use

EGR shall grant to the customer the right of use of the updated software to the extent that EGR granted him or her rights of use of the original software under the terms of the clauses governing the transfer or development of the software.

XII. Applicability of the GT&C

The terms of the GT&C relating to such matters as conclusion of contract, supply, payment and means of payment, reservation of ownership and rights, liability, limitation, place for hearings, etc. shall likewise be applied in an appropriate manner to contractual agreements for maintenance services. Insofar as updated versions of the software are transferred to the customer in the context of maintenance services, the SoftT&C shall be applied as appropriate.