

# General terms and conditions of EasternGraphics Swiss AG for software maintenance: Maintenance GTCs

(As at 2022-04-01)

## I. Scope of application

(1) The General Terms and Conditions of EasternGraphics Swiss AG, Lerchenalstrasse 27, 9016 St. Gallen, Switzerland ("EGR-Swiss") for software maintenance shall apply to all contractual relationships with customers in connection with the maintenance of software and shall be deemed to be an integral part of the contract unless otherwise agreed in writing in an individual agreement between EGR-Swiss and the customer.

(2) The Maintenance GTCs shall be supplemented by the General GTCs and the Maintenance GTCs of EGR-Swiss, which shall be part of the contract in addition to the Maintenance GTCs.

## II. Subject matter of the contract

(1) EGR-Swiss shall provide the following maintenance services for the software supplied by EGR-Swiss and specified in the offer or in the software maintenance contract:

- a) Provision of the current programme version (update) of the software made available by EGR-Swiss for the respective customer upon request by the customer. The customer shall inform himself on an ongoing basis whether new programme versions are available.
- b) Elimination of defects in the respective current and the respective previous programme versions of the software outside the applicable liability for defects.

As is well known, complex software cannot be developed absolutely error-free. Not every error is a defect. Therefore, the maintenance service in accordance with clause II. (1) lit. b) only refers to defects, not to errors that are not defects.

(2) The scope of the above service is described in detail below. EGR-Swiss shall not be obliged to supply any other services than those which now follow.

(3) EGR-Swiss shall provide the maintenance services only for the respective current and the respective previous programme versions of the software. Older programme versions shall regularly be dropped from the maintenance. The maintenance services of EGR-Swiss shall furthermore be limited in each case to the standard version of the software.

(4) The transfer of programme functions of the software individually adapted for the customer by changing the programme code (individual adaptations) into the new programme version or into the maintenance release of the software shall not be the object of the maintenance services unless EGR-Swiss and the customer have agreed this individually. If the customer uses a programme version which is not included in the maintenance and/or which contains individual adaptations which are not included in this software maintenance contract, EGR-Swiss shall check, after separate agreement and against separate remuneration, whether the programme version which is no longer current can be brought up to the new programme status or whether it is possible to take over the individual adaptations into the new programme version. Insofar as possible after the result of this check, EGR-Swiss shall, after separate agreement and against separate remuneration, bring the software up to the current programme version or transfer the individual adjustments to the new programme version. Unless otherwise agreed, the amount of remuneration shall be based on actual expenditure at the hourly or daily rates of the respective current EGR-Swiss price list for services. If the maintenance services referred to in this paragraph cannot be provided at reasonable expense, EGR-Swiss shall not be obliged to do so.

(5) EGR-Swiss owes maintenance services only if the software is installed on a system environment approved by EGR for that software.

(6) EGR-Swiss'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-Swiss. 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. If the above conditions are not met and EGR-Swiss nevertheless provides maintenance services, the customer shall pay EGR-Swiss for the resulting expenditure at the hourly or daily rates in the current EGR-Swiss price list for services. Section V. (1) g) of these GTCs shall remain unaffected by this.

## IV. Supply of current program versions (updates)

(1) EGR-Swiss shall provide the customer with the new programme version (update) upon customer's request. This shall not apply to extensions of

the software to be maintained which EGR-Swiss is launching and marketing as a new or independent product nor to new developments of the software with the same or similar functions (upgrades) or on the basis of another licensing model.

(2) The updates are provided by making them available on a server for downloading via data networks (e.g. VPN or Internet).

(3) The installation and commissioning of the updates are the responsibility of the customer.

(4) The customer shall receive the same rights to the updates as to the software for which the updates are intended.

## V. Removal of defects from the software

(1) EGR-Swiss shall remove or have removed within a reasonable period any defects from the software of which EGR-Swiss is informed by the customer or otherwise becomes aware in accordance with clause II.b) hereof.

Insofar as the customer has claims for defects against EGR-Swiss on the basis of the software transfer contract concluded with EGR-Swiss, these shall be based on the software transfer contract, irrespective of whether the defect occurred before or after conclusion of the software maintenance contract.

(2) EGR-Swiss shall remedy the defects notified by the customer by suitable measures of its own direction. The right of EGR-Swiss to refuse the removal of defects under the legal conditions shall remain unaffected. Insofar as it is reasonable for the customer, EGR-Swiss shall be entitled to provide the customer with a new version of the software (e.g. update or a release/patch) for the purpose of remedying the defect, which no longer contains the defect complained of or which remedies it, or to develop an alternative solution or to circumvent the defect by changing the configuration of the software. The installation and commissioning of this update or this release/patch is the responsibility of the customer.

(3) The removal of defects on the customer's premises shall only take place if no other measure promises success.

(4) EGR-Swiss shall not be liable for the correctness of the customer's data located on the software and the possible errors or defects resulting therefrom.

(5) If it turns out that a defect reported by the customer does not actually exist or is not due to the software, the customer shall pay EGR-Swiss for the work involved in the analysis and other processing at the hourly or daily rates in the current EGR-Swiss price list for services.

## IV. Customer's duty of cooperation

(1) The customer shall support EGR-Swiss in every respect in the fulfilment of the contractual maintenance services in an appropriate manner and to an appropriate extent. This shall include in particular:

(a) Designation of a responsible person and, if necessary, a representative who has all the decision-making powers and authority required for the purposes of the performance of the contract.

(b) Insofar as services are provided by means of remote data transmission, the customer shall make available to EGR-Swiss at his own expense the suitable system environment (hardware and software) as well as the data lines up to the public data network ready for operation and shall maintain these.

(c) Insofar as EGR-Swiss renders services at the customer's premises or at another location agreed with the customer, the customer shall grant EGR-Swiss and its employees access to the software and to the infrastructure required for its use, in particular to the system areas in which the cause of the defect lies and in which the defect can be provided.

(d) Insofar as it is unclear which system component is causing a defect, the customer shall first carry out an analysis of the system environment together with EGR-Swiss and - if necessary - involve third parties with the necessary know-how regarding the system environment at his own expense.

(e) During the performance of the service, the customer shall provide EGR-Swiss with a competent employee on an ongoing basis who shall provide information about the overall system at the customer's and the use of the software as well as the notified defect and carry out test runs.

(f) The customer shall install the new programme versions provided by EGR-Swiss according to EGR-Swiss' instructions.

(g) Insofar as this is necessary for the creation and/or use of a new programme version of the software to be maintained, the customer shall provide new versions of the operating system, the database or other

## **General terms and conditions of EasternGraphics Swiss AG for software maintenance: Maintenance GTCs** (As at 2022-04-01)

means necessary for the use of the software ready for operation at his own expense.

h) Any defects that occur shall be documented by the customer in a manner that is comprehensible to EGR-Swiss and shall be notified to EGR-Swiss immediately after their discovery and, in the case of notification by telephone, shall be communicated to EGR-Swiss subsequently in writing or as an e-mail. This notification shall contain the detailed circumstances of the occurrence of the defect, its effects and possible causes.

(2) The aforementioned duties to cooperate are essential contractual duties. If the customer breaches his duties to cooperate, EGR-Swiss shall not be obliged to provide the service. In the event of repeated or serious breach of duty EGR-Swiss shall be entitled to terminate the contractual relationship without notice.

### **VI. Remuneration, Prices**

(1) The remuneration for the services listed in Section II of these GTCs and the payment modalities are determined in the software maintenance contract. Within the liability for material defects, the payment of the remuneration shall exclusively cover the provision of the updates. After expiry of the liability for material defects the remuneration shall also include the removal of defects according to section IV. of these GTCs.

(2) EGR-Swiss shall be entitled to increase the remuneration from the respective next contract year with a notice period of six months. On receipt of the statement from EGR-Swiss about the increase in remuneration the customer shall have the right to terminate the software maintenance contract with a notice period of five months to the end of the current contract year. If the customer does not exercise this right, he thereby declares his consent to the increase of the remuneration as of the next contract year.

### **VII. Liability for defects**

(1) The provisions of the Software GTCs concerning liability for defects shall apply to the updates supplied by EGR-Swiss within the framework of this contract.

(2) If EGR-Swiss cannot fulfil its obligation from the liability for defects even after setting a deadline, the customer shall be entitled to reduce the agreed remuneration appropriately or to terminate the software maintenance contract in each case under the statutory conditions.

(3) The customer's claims for defects shall become time-barred within a period of one year from the transfer of risk.

### **VIII. Commencement, duration and termination of the software maintenance contract**

(1) Unless otherwise agreed, the maintenance contract shall commence on the first day of the calendar month following the activation of the licence for the software and shall run for an indefinite period. The contract may be terminated with six months' notice to the end of a contractual year, but no earlier than the end of the second contractual year. This commitment period shall not apply in the event of a price increase pursuant to section VI. (2).

(2) The software maintenance contract always applies to the software including all modules, regardless of whether these modules were already included in the software at the beginning of the contract or whether they were or will be integrated into the software at a later date. Termination of the software maintenance contract with respect to individual software components or individual modules is not possible unless these can be extracted from the software.

(3) 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.

### **IX. Applicability of the General GTCs**

The General GTCs and the Software GTCs of EGR-Swiss shall supplement these Maintenance GTCs and shall apply subordinately in the event of contradictions.