

# General Terms and Conditions for the Maintenance of Software of CENIT AG

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## 1 Object and Scope of Maintenance

- 1.1 The object of the maintenance services is the software supplied to the customer on the basis of the *General Terms and Conditions for Deliveries and Services* of CENIT AG (CENIT), which software has been developed and produced by CENIT. The exact designation of the supplied software in respect of which maintenance services according to these *General Terms and Conditions for the Maintenance of Software* are provided is stated in the program certificate that is attached to the confirmation of the order by CENIT. The General Terms and Conditions for Software Licenses of CENIT apply to the right to use the software.
- 1.2 Maintenance of the software by CENIT may include the following services as specified in the program certificate:
- Hotline service (see no. 2 below);
  - Support service (see no. 3 below);
  - Update service (see no. 4 below).
- 1.3 These *General Terms and Conditions for the Maintenance of Software* shall also apply to future versions of the software supplied to the customer by CENIT in the context of the update service according to no. 4.1 below, unless otherwise agreed on the occasion of the supply of the respective later version. After a new version has been released, the maintenance services for the respective previous version will be continued for a period of six months. Special agreements must be made if older software versions are to be taken into account.
- 1.4 Maintenance always refers to the entire license stock of the customer of a particular software product. The customer must therefore either keep any and all licenses of the relevant software product under maintenance or terminate maintenance in accordance with the provisions of these *General Terms and Conditions for the Maintenance of Software* for the entire license stock of the relevant software product.

## 2 Hotline Service

- 2.1 Furthermore, the hotline service will be available to the customer for purposes of accepting notifications of failures. To the extent possible, the hotline service will remedy such failures and/or defects of the program by indicating a simple bypass solution to be carried out by the customer (First Level Support). Otherwise, the problem will be promptly communicated to the support service of CENIT (see no. 3 below) or the support infrastructure of the respective third-party manufacturer.

2.2 The hotline service of CENIT is at the customer's disposal on working days (Monday through Friday, not including statutory holidays at the seat of CENIT) from 8:00 a.m. through 7:00 p.m. and can be reached as follows:

- by telephone at +49 711 7825-3222
- by fax at +49 711 7825-4222
- by e-mail at [support@cenit.com](mailto:support@cenit.com)
- online at [www.cenit.de](http://www.cenit.de)

### 3 Support Service

3.1 After notification by the hotline service, failures occurring during the normal use of the software by the customer will be handled by CENIT's support service (Second Level Support). A failure is deemed to exist if the software does not fulfill the functions indicated in the program documentation, if it furnishes incorrect results, interrupts its run in an uncontrolled manner, or otherwise fails to work according to its agreed functions so that the normal use of the software is significantly impaired.

3.2 CENIT shall be obligated in the context of the support service to narrow down the cause of the failure, analyze the failure, and remove it or, to the extent that a removal is not possible with a reasonable expenditure of money and/or time, to maintain the operation of the software by pointing out a bypass solution.

3.3 Measures of the support service will be carried out during the service hours stated under no. 2.2 above. Measures outside these hours will be based on a separate agreement in the individual case only, subject to payment of separate remuneration.

3.4 The staff members of the Support Service Center of CENIT will classify the failures reported by the hotline service for purposes of their handling according to the following priority levels:

- **Priority P1: Prevention of Operations**

A prevention of operations is deemed to exist if, due to malfunctions, incorrect work results, or response times being exceeded, the use of the software is impossible not only temporarily, or is restricted to such a degree that central business processes can no longer be executed.

- **Priority P2: Disturbance of Operations**

A disturbance of operations is deemed to exist if, due to malfunctions, incorrect work results, or response times being exceeded, there is a disturbance in the functions of the working place and such disturbance has a considerable adverse effect on business processes, even though the use of the software is not impossible or seriously limited.

- **Priority P3: Other Disturbances**

Other disturbances are deemed to exist if the use of the software is not materially affected, especially if there is no adverse effect on the functions of the working place.

3.5 In the context of its support service, CENIT offers the following response times during the service hours according to no. 2.2 above; these response times are counted from the point in time of the receipt of the detailed notification of the failure according to no. 6.1 below by the hotline service (Call Receipt):

- **Priority P1:** Response time 2 hours (in the event of a Call Receipt by 4:00 p.m., the call will be passed on to and initially handled by the support service on the same day)
- **Priority P2:** Response time 4 hours
- **Priority P3:** Response time 8 hours

Response time shall mean the time it takes for a qualified staff member of CENIT's Support Service Center to actively attend to the reported failure and initiate the handling of the failure either by telephone, email, or remote access or, if necessary in the context of reported failures of the priority level P 1, by carrying out support services on the customer's premises.

3.6 If a reported failure of the priority level P 1 cannot be removed within 24 hours (during the service hours according to no. 2.2 above) as from the Call Receipt, an escalation process will automatically be initiated within CENIT. CENIT will give the customer the name of a responsible staff member who will control the handling of the failure and coordinate all measures that are necessary both internally and externally. These measures will, for example, include:

- Preparing an action scheme jointly with the customer;
- informing CENIT's management;
- making inquiries with the development department of CENIT.

The indicated staff member will be the personal contact person of the customer and will keep the customer informed of all activities. After the removal of the failure, the entire system will continue to be observed for a certain period of time. During this phase, the indicated staff member will continue to be at the disposal of the customer and assist the customer with advice.

3.7 In all cases other than those described under no. 3.6 above, the member of the CENIT hotline service taking delivery of the notification of the failure remains the customer's principal contact person as regards the handling of the failure. The member of the hotline service coordinates all necessary steps and informs the contact person with the customer at regular intervals of the progress made with the removal of the failure.

## 4 Update Service

4.1 In the context of the update service, CENIT will supply the customer with new program versions of the software as well as the pertinent program documentation on machine-readable data storage media in object code format or by way of a download for installation by the customer.

4.2 The update service does not include extensions of the software with modified or improved functions separately offered by CENIT as new standard programs or

standard modules (Upgrades). Licenses for the use of such Upgrades can additionally be acquired by the customer at the list prices of CENIT applicable from time to time.

4.3 With regard to the right to use the new program versions of the software supplied to the customer in the context of the update service, the underlying *General Terms and Conditions for Software Licenses* of CENIT (for an unlimited period of time or for a definite period of time) of the originally supplied program version shall apply. CENIT's warranty and liability obligations in respect of the new program versions shall be governed by the *General Terms and Conditions for Deliveries and Services* of CENIT.

## **5 Delimitation: Services not included**

5.1 An obligation on the part of CENIT to provide maintenance services according to these *General Terms and Conditions for the Maintenance of Software* does not exist:

- outside the service hours stated under no. 2.2 above;
- if the software is used contrary to the provisions of the applicable license conditions;
- where the software is modified by the customer or a third party;
- with regard to failures of the software that have been caused by faulty application on the part of the customer and that could have been prevented in the event of careful consultation of the program documentation;
- for failures of the software due to virus infestation or other external influences for which CENIT is not responsible;
- for failures of the software that are due to defects in the customer's hard-ware, operating system, or other computer programs;
- for the reconstruction of sets of data that the customer has not sufficiently secured against loss, contrary to the provisions of no. 6.4 below.

5.2 The scope of maintenance does not include services such as the installation of software, data conversions, research tasks, system or environment modifications, model data analyses, responses to questions relating to infrastructure or installation, as well as support for software products and modules other than those listed on the program certificate. Such services can be rendered under a separate service agreement.

5.3 The prerequisite for the provision of maintenance services by CENIT is that the customer's operators are trained in the use of the software products and modules that the customer uses and that they have acquired practical experience in working with these applications. CENIT reserves the right to only respond to questions asked frequently repeated by users, which might be avoided with appropriate training or by carefully reviewing the program documentation in return for separate remuneration.

5.4 Operator training by the CENIT Support Center is not included in the scope of supply according to these *General Terms and Conditions for the Maintenance of*

Software, however it is offered to the customer as an additional service at a charge on the basis of the General Terms and Conditions for Deliveries and Services of CENIT AG.

## **6 Cooperation Duties of the Customer**

- 6.1 In the context of the notification of the hotline service of failures, the customer shall furnish CENIT with all available failure reports, system logs, log files, interim and test results, as well as any other documentation and information necessary for analyzing and handling the failure. The failure must be described such that it can be reproduced. If CENIT carries out an analysis of a failure at the customer's request and the analysis shows that there is no failure that CENIT is obligated to remove according to these *General Terms and Conditions for the Maintenance of Software*, CENIT may invoice the customer for the corresponding expenditure on the basis of the hourly rates of CENIT as applicable from time to time.
- 6.2 For the provision of the maintenance services, especially in the context of the support service, the customer shall grant CENIT and its staff members free access to the software as well as to the hardware and operating system of the customer on which it is installed. Furthermore, the customer shall be obligated to provide CENIT with a suitable infrastructure for remote access to the software in the event of a failure.
- 6.3 The customer shall name up to three authorized and qualified contact persons who may directly call the CENIT hotline. Additionally, the customer shall name one staff member working at the place of installation of the software as the principal contact person who will make all decisions in connection with the performance of the maintenance services or will ensure that such decisions are made without undue delay.
- 6.4 The customer shall be obligated to carry out data backups at regular intervals pursuant to the requirements relating to data backups stipulated in the applicable program documentation of CENIT. In the absence of such requirements, data backups must be made according to the generally acknowledged principles of secure data processing.

## **7 Maintenance Charge**

- 7.1 Unless otherwise stated in the program certificate of CENIT, the remuneration for the maintenance services to be rendered according to these *General Terms and Conditions for the Maintenance of Software* (hereinafter "Annual Maintenance Charge – AMC") shall be as stated in CENIT's price list as amended from time to time.
- 7.2 The AMC must be paid annually in advance and will be billed for the first time at the beginning of the maintenance agreement and then at the beginning of each new contractual year. Timely payment of the AMC is a prerequisite for the provision of the maintenance services in the respective contractual year.

- 7.3 To the extent that the maintenance services are performed in connection with a time license according to the *General Terms and Conditions for Software Licenses of CENIT AG for a Definite Period of Time*, the annual maintenance fees are included in the yearly license fees (“Yearly License Charge – YLC”) so that no separate invoice for the maintenance fees will be issued. Timely payment of the AMC is a prerequisite for the provision of the maintenance services in the respective contractual year.
- 7.4 In the event of extensions of use through the acquisition of further licenses during the term of the maintenance agreement, the AMC will increase proportionately. In the absence of separate agreements, the prices stated in the price list of CENIT, as amended from time to time, shall apply. The increased AMC shall be payable from the point in time of commencement of use of the additional licenses.
- 7.5 CENIT shall be entitled to adjust the AMC subject to three months' prior notice with effect as of the beginning of any contractual year first after the minimum term as specified in the program certificate, in order to compensate increases in wage costs and other costs, and/or in the context of the general increase in the license and/or maintenance fees for the CENIT Software. If the increase exceeds 3% of the last paid AMC, the customer shall be entitled to terminate the maintenance agreement subject to one month's notice in writing with effect as of the beginning of the next contractual year. If the customer does not give notice of termination, the price adjustment will be effective from the beginning of the next contractual year. CENIT will inform the customer of this consequence at the announcement of the adjustment.
- 7.6 Otherwise, with respect to the billing and payment of the AMC, the provisions of the *General Terms and Conditions for Deliveries and Services* of CENIT apply.

## **8 Term, Termination**

- 8.1 The obligation of CENIT to provide the maintenance services shall commence with the beginning date stated in the program certificate of CENIT, however not prior to payment of the AMC or the license fee (YLC) for the first contractual year.
- 8.2 The maintenance agreement is concluded for the minimum term stated in the program certificate of CENIT. After expiration of the minimum term, the maintenance agreement will be automatically renewed for successive one-year periods provided that it is not terminated in writing by either of the contractual parties subject to three months' written notice, with effect at the end of the minimum term or any extension period. During the minimum term or an extension period, neither party shall have the right to give notice of ordinary termination of the maintenance agreement.
- 8.3 A partial termination of the maintenance agreement with regard to part of the license stock of a particular software product is excluded (cf. No. 1.4).
- 8.4 To the extent that the maintenance services are provided in connection with a time license according to the *General Terms and Conditions for Software*

*Licenses of CENIT AG for a Definite Period of Time*, a termination of the maintenance agreement without concurrent termination of the license shall not be possible. The termination of the license shall be governed exclusively by the provisions of the aforementioned license conditions.

8.5 The maintenance agreement shall end without notice of termination being required if the license granted to the customer for the software to be maintained ends according to the applicable license conditions. In this case, CENIT is not obligated to reimburse maintenance fees already paid for periods of time prior to the termination.

8.6 The right to terminate the maintenance agreement for good cause shall not be affected.

8.7 All notices of termination must be given in writing.

## **9 Other Provisions**

9.1 Upon prior notification, CENIT shall be entitled to provide parts of the maintenance services through or with the help of third enterprises.

9.2 To the extent that these *General Terms and Conditions for the Maintenance of Software* do not contain any special or deviating provisions, the performance of the maintenance services and the legal relation between CENIT and the customer shall additionally be governed by the *General Terms and Conditions for Deliveries and Services* of CENIT.