

# General Terms and Conditions for Maintenance and Support Services of LIS GmbH

## General Terms and Conditions for Maintenance and Support

### I Subject matter of the contract

- I.1 The following terms and conditions apply to the provision of maintenance and support services by LIS Logistische Informationssysteme GmbH in Greven ("LIS GmbH") to the customer (hereinafter also "Licensee") for the software described in more detail in the module overview, which is attached to the contract concluded between the parties for the Provision of Standard Software ("Licence Object").
- I.2 Terms and conditions of the Licensee or third parties shall not apply, even if LIS GmbH does not separately object to their validity in individual cases. Even if LIS GmbH refers to a letter containing or referring to the terms and conditions of the Licensee or a third party, this does not constitute an agreement to the validity of those terms and conditions.

### II Offer and conclusion of contract

- II.1 All offers made by LIS GmbH are subject to change and non-binding, unless they are expressly labelled as binding or contain a specific acceptance period. LIS GmbH may accept orders or commissions within 1 month of receipt.
- II.2 The legal relationship between LIS GmbH and the Licensee shall be governed solely by the maintenance contract concluded in writing, including these General Terms and Conditions for Maintenance and Support Services of LIS GmbH. This fully reflects all agreements between the contracting parties on the subject matter of the contract. Verbal promises made by LIS GmbH prior to the conclusion of the contract are not legally binding and verbal agreements between the contracting parties shall be replaced by the written contract, unless it is expressly stated in each case that they shall continue to be binding.
- II.3 Additions and amendments to the agreements made, including these General Terms and Conditions, must be made in text form to be effective.
- II.4 Details provided by LIS GmbH on the subject matter of the service shall only be approximate unless the usability for the contractually intended purpose requires exact conformity. They are not guaranteed characteristics, but descriptions or labelling of performance. Deviations that are customary in the trade and deviations that occur due to legal regulations or represent technical improvements are permissible, provided that they do not impair the usability for the contractually intended purpose.

### III Service content

#### III.1 Maintenance (software)

- III.1.a. The last three annual versions of the Licence Object are maintained.
- III.1.b. Maintenance shall, at the discretion of LIS GmbH, include the handling of errors and defects that occur during the proper use of Licence Object or that become apparent in the associated program documentation. For this purpose, LIS GmbH shall provide updates, hotfixes, upgrades and/or a new programme version of the Licence Object. The Licence Object can only be updated and upgraded with regard to the last three annual versions.
- III.1.c. The services also include the handling of errors or other defects that LIS GmbH becomes aware of in the Licence Object independently of its use by the licensee. Existing claims for defects on the part of the licensee remain unaffected.
- III.1.d. Error handling within the meaning of these terms and conditions includes localisation of the cause of the error, error diagnosis and services aimed at rectifying the error (in particular patches and service packs). LIS GmbH accepts no responsibility for rectifying the error. Error handling services may, at the discretion of LIS GmbH, also be provided by means of a bypass, update or upgrade delivery and, after consultation with the Licensee, also by delivery of a new version.
- III.1.e. New or corrected programme versions are offered to the Licensee for download in the LIS customer portal.

#### III.2 Support (user questions)

- III.2. Support is provided via a telephone hotline and a ticket system.
- III.2.a. Telephone hotline  
LIS GmbH provides a telephone hotline from Monday to Friday from 8:00 am to 5:00 pm. A separate technical hotline is available for technical emergencies from 06:00 to 8:00 and 17:00 to 22:00.  
Hotline number: +492571 929111  
Emergency hotline number: +492571 929299
- III.2.b. Ticket system  
The customer shall report errors via the ticket system set up by LIS. An error message must contain a sufficiently specified error description that includes the error behaviour, affected product components and steps already taken.
- III.2. LIS GmbH shall offer the Licensee the use of its computer centre for the preparation or restoration of any destroyed programs or data carriers or for the performance of program tests for a fee.
- III.3. Support also extends to the documentation belonging to the software.

#### III.3 Not included in the maintenance / support services

- III.3.a. If the Licensee orders services from LIS GmbH that go beyond maintenance and support as defined in Sections III.1 and III.2 of these Terms and Conditions, this shall be done on the basis of a contract to be concluded separately between the parties in accordance with the applicable price lists and cost rates of LIS GmbH.
- III.3.b. Any changes, adjustments, settings or extensions to printing, statistics, interfaces or functions are subject to a charge.
- III.3.c. Services outside the agreed availability of support.
- III.3.d. Services for the Licence Object that is not used under the hardware and software requirements specified by LIS GmbH.
- III.3.e. Services for the Licence Object which has been modified by programming work not carried out by LIS GmbH.
- III.3.f. Services for computer programs or parts thereof that are not part of the Licence Object.
- III.3.g. Services for Licence Object for which the updates or other bug fixes provided by LIS GmbH have not been installed and the reported error has already been rectified therein, unless their installation is unreasonable for the Licensee for reasons for which it is not responsible.
- III.3.h. Services for a Licence Object with a release status that is generally no longer maintained by LIS GmbH.

- III.3.i. Services that can be provided at the registered office of LIS GmbH but are provided at a different location at the request of the licence holder.
- I.3.j. services that become necessary because the Licensee fails to fulfil its obligations to cooperate.

#### **IV. Realisation**

- IV.1. The work of LIS GmbH is generally carried out on working days from Monday to Friday from 8:00 a.m. to 5:00 p.m., in exceptional cases by arrangement on the premises of the user. In the latter case, the travelling time for the outward and return journey is part of the working time.
- IV.2. LIS GmbH shall provide its services using such technical aids as LIS GmbH deems necessary or expedient and which are available to LIS GmbH, including any remote support to be introduced.
- IV.3. LIS GmbH is authorised to commission subcontractors with the implementation.
- IV.4. The Licensee shall ensure that expert personnel trained in the operation of the system and the programmes are available during the term of the contract.

#### **V. Co-operation and obligations of the parties**

- V.1. The parties undertake to work together closely and efficiently, for which the personnel, organisational, professional and technical responsibility of the Licensee is also essential, in particular
- to provide proper documents, documentation and information required for the provision of the service, in particular about existing systems, devices, computer programmes and computer programme parts that are to interact with the service to be provided;
  - provide the necessary workspaces and work equipment and enable remote access in accordance with the specifications of LIS GmbH;
  - provide test plans and test data, if available, and set up and provide the test environment;
  - to document in a reproducible, and in any case in a comprehensible form, any errors detected in the course of test or live operation and to notify LIS GmbH immediately;
  - To make available at its own expense facilities, equipment and personnel suitable for co-operation, insofar as necessary for the provision of services;
  - to fulfil the (cooperation) obligations in due time, to perform the (cooperation) actions in due time and to submit declarations in due time.
- V.2. The Licensee shall designate at least one employee employed at the installation site of the Licence Object as a contact person for LIS GmbH. LIS GmbH shall be informed immediately of any changes to the contact person. The contact person must have experience in handling the Licence Object. Only the contact person is authorised to submit error messages.
- V.3. Before reporting an error, the Licensee must analyse the system environment as far as possible to ensure that the error is not attributable to system components that are not covered by this Agreement.
- V.4. The Licensee shall immediately install or carry out updates or other measures to rectify errors provided by LIS GmbH.
- V.5. The Licensee guarantees permanent system management of the system environment in which the Licence Object is running. The Licensee shall maintain its system environment (hardware and software) on an ongoing basis (the Licensee should conclude suitable maintenance contracts for this purpose).
- V.6. The Licensee is responsible for regularly backing up its database with the diligence of a prudent businessman. In particular, the customer shall carry out a complete data backup of all system and application data immediately prior to any installation and/or other intervention by LIS GmbH or a third party commissioned by LIS GmbH. The data backups must be stored in such a way that the backed-up data can be restored at any time.
- V.7. The Licensee shall provide LIS GmbH with the right to use third-party systems insofar as this is necessary in order to provide the services owed under this Agreement.
- V.8. If the Licensee is in default with the fulfilment of the actions for which it is responsible, LIS GmbH's obligation to perform shall be suspended for the duration of the default, which cannot be performed without this action or can only be performed with disproportionate additional expense. Any additional expenses incurred as a result shall be reimbursed to LIS GmbH by the Licensee in addition to the agreed remuneration on the basis of the applicable hourly rates. LIS GmbH's statutory right of cancellation shall remain unaffected.

#### **VI. Remuneration**

- VI.1. The annual remuneration for the services owed under this contract is set out in the module overview attached to the contract concluded between the parties for the Provision of Standard Software. The fee is calculated annually in advance and is due upon receipt of the invoice. If a contract is concluded during the year, invoicing is pro rata temporis.
- VI.2. Services outside the agreed scope of the support or subject matter of the contract shall be remunerated separately by the Licensee. The applicable rates of LIS GmbH shall apply.
- VI.3. LIS GmbH reserves the right to automatically increase the remuneration annually by a flat rate of 1% plus the inflation rate of the Federal Statistical Office. This inflation rate can be found on the website of the Federal Statistical Office and can be accessed at the following link at the time the contract is concluded: [https://www.destatis.de/DE/Themen/Wirtschaft/Preise/Verbraucherpreisindex/\\_inhalt.html](https://www.destatis.de/DE/Themen/Wirtschaft/Preise/Verbraucherpreisindex/_inhalt.html). The calculation of the price increase by LIS GmbH is based on the arithmetic mean of the inflation values of the last 12 months.
- VI.4. If the Licensee is in default of payment, interest shall be charged on the outstanding amount at 9 percentage points above the applicable base interest rate. This does not affect the assertion of further rights.
- VI.5. Unless otherwise expressly agreed, all amounts stated in the module overview are net amounts, i.e. plus statutory VAT.
- VI.6. LIS GmbH may withhold its services if and for as long as the Licensee is in arrears with payment of an amount equivalent to two months' remuneration.
- VI.7. The Licensee shall only be entitled to rights of set-off or retention to the extent that its claim has been legally established or is undisputed. In the event of defects in the software, the counter-rights of the licensee remain unaffected.

#### **VII. Rights of use**

Insofar as LIS GmbH provides software or other works capable of independent copyright protection for use on the basis of this contract, these shall be subject to the rights of use of the respective licence agreement for the maintained software.

### **VIII. Claims for material defects in updates, upgrades and new programme versions**

- VIII.1. Insofar as updates, upgrades or new programme versions or other work services are delivered or rendered to the Licensee within the scope of this Agreement, the claims for defects with regard to the innovations contained therein, which do not merely represent a correction of errors, shall be determined in accordance with the following paragraphs VII.2. to VII.8.
- VIII.2. Claims for defects shall not exist in the event of an insignificant deviation from the agreed or presumed quality and in the event of only insignificant impairment of usability. Product descriptions do not constitute a guarantee without a separate written agreement.
- VIII.3. LIS GmbH shall be entitled, in the provision of services within the meaning of Section VIII.1., to make changes to the software that could lead to the elimination and/or modification of individual functions of the software. Such changes do not constitute a material defect.
- VIII.4. If the Licensee requests subsequent fulfilment due to a defect, LIS GmbH shall have the right to choose between rectification, replacement delivery or replacement service. If the Licensee has set LIS GmbH a further reasonable period of grace after the first period has expired without result and this has also expired without result, or if a reasonable number of attempts to rectify the defect, supply a replacement or provide a replacement have been unsuccessful, the Licensee may, subject to the statutory requirements, terminate the contract or reduce the price and demand compensation for damages or expenses. Subsequent fulfilment can also take place by handing over or installing a new programme version or a work around. If the defect does not impair the functionality or only insignificantly, LIS GmbH shall be entitled to rectify the defect by supplying a new version or an update as part of its version, update and upgrade planning, to the exclusion of further claims for defects.
- VIII.5. Defects must be notified by a comprehensible description of the error symptoms, as far as possible, proven by written records or other documents illustrating the defects, e.g. screen shots. The notification of defects should enable the reproduction of the defect. Statutory obligations of the Licensee to inspect and give notice of defects shall remain unaffected. Defects are reported via the ticket system set up by LIS GmbH or the telephone hotline.
- VIII.6. The limitation period for claims for defects is 12 months. The period shall commence upon delivery of the update, upgrade or new programme version.
- VIII.7. Claims for damages are subject to the restrictions of Section X.
- VIII.8. Changes or extensions to the supplied updates, hotfixes or upgrades made by the Licensee itself or by third parties shall invalidate the Licensee's claims for defects, unless the Licensee proves that the change or extension is not the cause of the defect. LIS GmbH is also not liable for defects caused by improper operation and operating conditions or the use of unsuitable equipment by the licence holder. In any case, the Licensee shall bear the additional costs of remedying the defect resulting from the modification.

### **IX. Claims in the event of legal defects in updates, upgrades and new programme versions**

- IX.1. Insofar as updates, upgrades, new programme versions or other objects of purchase or work services are delivered or rendered to the Licensee within the scope of this Agreement, the Licensee's claims for defects of title with regard to the innovations contained therein, which do not constitute mere bug fixes, shall be determined in accordance with the following paragraphs IX.2 to IX.6.
- IX.2. The software supplied or provided by LIS GmbH is free from third-party rights that would prevent it from being used in accordance with the contract. This does not apply to customary retentions of title.
- IX.3. If third parties are entitled to such rights and assert them, LIS GmbH shall do everything in its power to defend the software against the asserted rights of third parties at its own expense. The Licensee shall inform LIS GmbH immediately in writing of the assertion of such third-party rights and shall grant LIS GmbH all powers of attorney and authorisations required to defend the software against the asserted third-party rights.
- IX.4. If there are defects of title, LIS GmbH shall be entitled (a) at its discretion to
- (i) to take lawful measures to remove the rights of third parties that impair the contractual use of the software, or
  - (ii) to eliminate their assertion, or
  - (iii) to modify or replace the software in such a way that it no longer infringes third-party rights, if and insofar as this does not significantly impair the owed functionality of the software,
- and (b) to reimburse the necessary reimbursable costs of legal action incurred by the Licensee.
- IX.5. If the indemnification pursuant to Section IX.3. fails within a reasonable grace period set by the Licensee, the Licensee may, at its discretion, terminate the contract or reduce the price and claim damages in accordance with the statutory requirements.
- IX.6. In all other respects, Sections VIII.6. and VIII.7. apply accordingly.

### **X. Liability, compensation for damages**

- If no other contractual liability agreement exists, the following provisions shall apply:
- X.1. LIS GmbH shall be fully liable in the event of intent, gross negligence, injury to life, limb or health, fraudulent intent and insofar as an express guarantee promise for the quality of an item or the Product Liability Act applies.
- X.2. Furthermore, LIS GmbH shall be liable, limited to the foreseeable damage typical of the contract, but not exceeding an amount of EUR 50,000.00 per claim, for the slightly negligent breach of obligations, the fulfilment of which is essential for the proper performance of the contract and on the observance of which the user may regularly rely.
- X.3. LIS GmbH shall only be liable for the loss of data up to the amount that would have been incurred if the data had been properly and regularly backed up in order to restore it.
- X.4. The provisions of sections X.1. to X.2. shall also apply to attributable breaches of duty by vicarious agents of LIS GmbH.
- X.5. Any further liability on the part of LIS GmbH is excluded on the merits.

### **XI. Contract term**

- XI.1. The contract comes into force upon installation of the software and is concluded for an indefinite period.
- XI.2. It can be cancelled at the end of each calendar year with three months' notice, for the first time at the end of the calendar year following the conclusion of the contract.
- XI.3. Each party is entitled to terminate individual modules of the Licence Object listed in the module overview with the aforementioned notice period.
- XI.4. The right to terminate the contract without notice for good cause remains unaffected.
- XI.5. Cancellations must be made in writing.

**XII. Final provisions**

- XII.1. This contract is governed exclusively by the law of the Federal Republic of Germany with the exception of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980.
- XII.2. If the Licensee is a merchant within the meaning of the German Commercial Code, the exclusive legal and international place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be the registered office of LIS GmbH in Greven, Germany. In all cases, however, LIS GmbH shall also be entitled to bring an action at the general place of jurisdiction of the Licensee. Overriding statutory provisions, in particular regarding exclusive responsibilities, remain unaffected.
- XII.3. The place of fulfilment is Greven, Germany.
- XII.4. Should parts of the General Terms and Conditions for Maintenance and Support Services or other agreements between the contracting parties be invalid for any reason, the legal validity of the remaining parts shall not be affected. In such a case, LIS GmbH and the licence holder are obliged to replace a void condition or agreement with one that comes closest to the economic purpose of the void condition or agreement. There are no verbal collateral agreements.

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