Software Maintenance and Hotline Agreement

ZEISS

for Application Software
Content:

Revision 002/27.01.2022

1. Subject Matter of the Contract

1.1 These Terms and Conditions for Software Maintenance and Hotline Service shall exclusively form the basis for the services provided by ZEISS under the Software Maintenance and Hotline Agreement with the customer, in accordance with the scope of services specified therein and in the agreed service descriptions. Deviating or supplementary agreements - in particular also conflicting terms and conditions of purchase of the customer - shall only apply if ZEISS expressly confirms them in writing, indicating that they are an amendment or supplement to the software maintenance and hotline agreement; this shall also apply if ZEISS does not expressly object to conflicting terms and conditions of purchase in individual cases. The written form requirement for amendments and supplements can only be waived on the basis of a written agreement.

2. Services

2.1 The content and scope of the services to be provided by ZEISS to the customer under the software maintenance and hotline agreement are set out in the service descriptions for the software maintenance and hotline service.

2.2 ZEISS shall provide software maintenance within the scope of this agreement only for the respective latest main revision that ZEISS has released. ZEISS may provide support services for earlier program versions for a separate charge; however, ZEISS is not obliged to provide such services.

3. System Manager

3.1 Within 4 weeks of the start of the contract, the customer shall name a system manager and a deputy as contact persons for the software maintenance and hotline service to ZEISS. The customer shall notify ZEISS immediately of any changes in the person of the contact person.

3.2 ZEISS shall send software revisions and updates, documentation, instructions and other correspondence within the scope of this maintenance agreement to the system administrator. Only the system administrator and his deputy are entitled to telephone advice and support from the hotline service.

3.3 The software installation may only be carried out by a trained system administrator.

4. Troubleshooting

4.1 ZEISS shall provide services on call to remedy defects in the software products (significant errors) and, within reason, other errors (non-significant errors) that occur during the use of the software products and/or become apparent in the associated application documentation.

4.2 A defect is the lack of conformity of the software with the performance specification issued by ZEISS as well as defects that make the use of the software impossible or significantly impair it.

An insignificant error exists if this error has no or only insignificant influence on the use of the software or if the function of the programme does not comply with the specifications of the documentation.

A fault must be describable and reproducible at any time.

4.3 The rectification of defects includes the delimitation of the cause of the defect, the diagnosis of the defect, as well as the rectification of the defect or, insofar as this is not possible with reasonable effort, the establishment of the operational readiness of the software products by bypassing the defect. The rectification of a defect in the software also includes the correction of the associated application documentation.

4.4 Reported errors that are not significant for the respective programme shall be taken into account by ZEISS when revising the programmes within the scope of the general software revisions; the time and manner of error elimination shall be reserved by ZEISS.

4.5 If ZEISS is unable to reproduce a defect itself, ZEISS may attempt to reproduce the defect on site together with the customer. The customer will support ZEISS in this. If a software problem reported by the customer turns out to be an application-related problem or a software error caused by the customer, ZEISS is entitled to charge the customer for the effort involved.

5 Obligations of the Customer to cooperate

5.1 When detecting, isolating and reporting errors or other defects, the customer must observe the application documentation belonging to the software product and any instructions from ZEISS. The customer shall take the necessary measures to determine, limit and document the errors or other defects within the scope of what is reasonable. This includes the preparation of a defect report, system logs and memory dumps, the provision of the affected input and output data, interim and test results and other documents suitable for illustrating the errors or other defects.

5.2 The customer shall allow ZEISS direct remote access to the software product. He shall also keep the technical facilities (power supply, telecommunication connections and data connections) required for the implementation ready for operation and provide these to a reasonable extent free of charge.

5.3 ZEISS shall be released from its obligations under Clause 4 insofar as the customer fails to comply with its duties to cooperate and the obligations under Clauses 6.1 to 6.4.

5.4 ZEISS shall also be released from its obligations under Clause 4 if the customer fails to meet its obligation to pay the remuneration in accordance with Clause 9.

6. Prerequisites for Software Maintenance

6.1 Current revision of the contract software.

A software maintenance contract can only be concluded on the basis of the current revision of the contractual software. If the customer does not have a current revision, this must first be acquired by means of a software upgrade. ZEISS is entitled to invoice its additional expenditure.

6.2 The customer must provide, at its own expense, adequately configured computer hardware/firmware and the necessary input and output devices in accordance with ZEISS's specifications for the revision level of the contractual software and the operating system in use at the customer's premises.

6.3 The customer's claim to software maintenance under this agreement does not exist if the customer himself or third parties have made changes to the software to be maintained or to the ZEISS device including computer and peripheral devices, unless the customer proves that the change does not affect the software maintenance services.

6.4 The customer shall, after consultation with ZEISS, provide all information necessary for dutiful performance of the software maintenance and hotline agreement.

6.5 ZEISS is entitled to have the software maintenance carried out by third parties. In the event of remote maintenance or the involvement of third parties, suitable measures for the protection of personal data shall be agreed separately between the parties.

6.6 The assignment of claims of the customer arising from this agreement to third parties is excluded. This also applies to claims of ZEISS against the customer.

7. Warranty

7.1 ZEISS shall remedy defects in software products, data carriers, firmware supplements and documents provided in writing within the scope of software maintenance at its own discretion by delivering defect-free goods or by rectifying the defect.

7.2 ZEISS shall eliminate defects in the software revisions and updates at its own discretion by providing instructions (by telephone or in writing) on how to avoid or circumvent the effects or by sending patch sets or a new software revision.

7.3 The customer may only assert other and more extensive warranty claims, in particular claims for withdrawal or reduction of the remuneration, if ZEISS has culpably failed to fulfil its warranty obligation even after expiry of a reasonable deadline set by the customer under threat of rejection or if at least two attempts at warranty have failed

7.4 The limitation period for warranty claims shall be 12 months and shall commence after acceptance of the services of ZEISS under this contract. Alternatively, in the absence of formal acceptance, it shall begin with the completion of the respective services under this contract or with the commissioning of the respective software products delivered to the customer under this contract.

7.5 There shall be no warranty claim for consultancy services and other services which do not consist of the provision of hardware or software.

8. Disclaimer and Limitation of Liability

8.1 Notwithstanding the statutory liability requirements, ZEISS shall only be liable without limitation for damages and reimbursement of expenses in the event of intent or gross negligence, and in the event of a slightly negligent breach of a material contractual obligation (i.e. a contractual obligation whose breach jeopardises the proper performance of the contract and the achievement of the purpose of the contract), limited to the typical contractual damage foreseeable at the time of conclusion of the contract.

8.2 The exclusions and limitations of liability contained in clause 8.1 shall also apply in the event of breaches of duty by persons for whose fault ZEISS is responsible.

8.3 The exclusions and limitations of liability contained in Sections8 .1 to8 .2 shall not apply if ZEISS has fraudulently concealed the defect, or ZEISS has assumed a written guarantee of quality within the meaning of Section 444 of the German Civil Code (declaration by ZEISS that the object of purchase has a certain quality at the time of the transfer of risk and that ZEISS intends to be liable for all

consequences of its absence irrespective of fault), or for damage based on injury to life, limb or health, as well as in the case of mandatory liability under the Product Liability Act.

8.4 ZEISS shall only be liable for the loss of data and its recovery in accordance with 8.1 and8 .2 insofar as such loss could not have been avoided by reasonable data backup measures taken by the customer.

8.5 In all other respects, ZEISS's liability is excluded. The burden of proof provided for by law shall remain unaffected.

9. Remuneration

9.1 The customer shall pay an annual fee for the software maintenance and hotline service. This fee is calculated according to the price list for the contractual software available at the customer's premises valid at the beginning of the contractual year. If the software maintenance and hotline agreement is extended in accordance with clause 11, the amount of the fee for the following contract year shall be based on the price list valid at the time of the extension. An increase compared to the current contractual year which exceeds 10% shall entitle the customer to terminate the agreement within 30 days of receipt of the notification with effect from the end of the expired contractual year.

9.2 The remuneration shall be due for payment without deduction at the beginning of each contractual year within 30 days of receipt of the invoice.

9.3 The statutory value added tax shall be charged additionally.

10. Functional Discount and Quantity Discount

If the customer concludes a software maintenance and hotline agreement for several ZEISS devices or for several contract years (offered depending on the respective ZEISS company), ZEISS shall grant a function and quantity discount according to the number of ZEISS devices or contract years in accordance with the discount scale in the respective valid price list. Software from third-party suppliers that can be obtained via ZEISS is excluded from this provision. The prerequisite for the granting of a discount for several ZEISS devices is the reduction of expenditure through compliance with the following conditions:

a) the customer designates only one system administrator for all ZEISS devices concerned; and

b) the customer agrees to the delivery of the software revisions and updates in only one copy for all affected ZEISS devices and

c) a single system administrator installs the respective licensed software revisions and updates on each affected ZEISS device at the customer's premises.

11. Duration

11.1 This Agreement shall have a minimum term of 12 months. It shall be automatically renewed for a further 12 months unless otherwise agreed or terminated by either party one month before the expiry of the respective term.

11.2 In the case of new delivery of the ZEISS device, the contract term shall commence on the date of installation of the ZEISS device at the customer's premises.

11.3 If this agreement is not concluded when a new ZEISS device is purchased, the warranty remains with the hotline support and error correction in the software revision supplied. Software upgrades and thus function extensions are therefore not granted.

11.4 If the agreement is concluded later than 6 months after delivery of the ZEISS software product, additional costs may be incurred due to software upgrades.

11.5 The right to extraordinary termination for good cause remains unaffected. Good cause shall be deemed to be in particular any breach of contract which makes further adherence to the contract unreasonable for the other party. This also includes any unauthorised use of the software.

12. Final Provisions

12.1 The following pages "Description of Services" are, insofar as the corresponding software maintenance service has been agreed, part of the software maintenance and hotline service and take precedence over these Terms and Conditions for Software Maintenance and Hotline Agreement.

12.2 ZEISS is entitled to assign this Agreement, parts of this Agreement, or rights and obligations under this Agreement to its affiliates.

12.3 This agreement shall be governed by the laws of the Federal Republic of Germany. The place of jurisdiction for all claims in connection with this agreement shall be exclusively Stuttgart or, at the discretion of ZEISS, the place of residence or business of the customer.

12.4 Should individual clauses of this Software Maintenance and Hotline Agreement be invalid in whole or in part, this shall not affect the validity of the remaining clauses or the remaining parts of such clauses.

Service Description Software Maintenance

1. Services

Software maintenance includes the provision of corrected and further developed programme versions of the contractual software and comprises in detail:

1.1 ZEISS regularly revises the contractual software and, depending on the respective software product, typically provides the customer with a revised version (main revision) of the entire contractual software per calendar year, on a suitable data carrier or for download on demand.

1.2 The annual software maintenance includes adaptations, improvements and further developments of individual or several measurement and evaluation programmes of the contractual software.

1.3 An up-to-date version of the respective operating instructions is available on the ZEISS portal of the customer's respective contractual partner.

2. Special Requirements

2.1 Software maintenance requires the conclusion of the software maintenance and hotline agreement with the services of the hotline service in accordance with the service description valid for it.

2.2 Each major revision may also require a new revision level of the operating system software, which must be provided by the Client.

3. Services not included in Software Maintenance

3.1 The elimination of individual program errors in the contractual software on the customer's premises in individual cases only for the customer.

3.2 Installing the main revision and error correction patch sets.

3.3 Installation and delivery of operating systems.

3.4 Any firmware, hardware or control supplements required and their installation.

3.5 Viewing or installing third-party programmes and interfaces, database queries, form changes, reports, quick changes, server configuration or system administration, training, familiarisation, scripting support or similar.

3.6 Updating of project templates, scripts not written by ZEISS or similar by the customer. Problems and malfunctions caused by a software product not supplied by ZEISS.

3.7 Rectification of errors and damage caused by incorrect operation, improper use by the customer, acts of third parties or force majeure. Such work may be agreed on a case-by-case basis against additional remuneration.

3.8 Damage and malfunctions caused by environmental conditions at the installation site, malfunctions in the power supply or lack of power supply, faulty hardware or other influences for which ZEISS is not responsible.

3.9 The installation of software revisions and updates as well as firmware supplements on the respective computer or controller for the ZEISS device at the customer's premises.

3.10 On-site system and application support. At the customer's request, ZEISS shall provide installation services as well as systems engineering and application engineering support on site at a separate charge.

Service Description Hotline Service

1. Services

The hotline service includes telephone advice and support on the contract software, also includes support by e-mail and comprises in detail:

1.1 Telephone advice and support shall be provided to the Client's system manager and/or his/her deputy.

1.2 Telephone advice and support in the analysis of problems that have occurred, in particular to clarify programme and operating errors.

1.3 Telephone advice and support to eliminate the effects of operating errors and answer questions about the application, operation and documentation.

1.4 Telephone advice and support by providing tips on how to work around programme errors that have occurred, as far as this is possible.

1.5 Telephone advice and support shall be provided on the operational working days of the respective ZEISS company.

1.6 Telephone advice and support is only provided for the latest and penultimate version of a software programme. Older software versions must be updated to the latest available version in order to receive Hotline Services.

1.7 Telephone advice in the area of "Application Technical Support" (ATU) for operation, is limited to 10 call authorisations per year. Further call authorisations can also be acquired subsequently.

1.8 ZEISS shall provide the customer with the following services:

- Access to the ZEISS communication network

- Information on training programmes, online knowledge base, FAQ

- Application information with discussion forum

- Advance notice of new products

- Notes on metrological training measures.

- Links to ZEISS Business Partners.

1.9 Software problems that cannot be solved by telephone advice and support shall be notified by the customer to ZEISS in the form of a written error message or via e-mail, stating relevant information.

1.10 In addition, the hotline service offers the possibility of using remote maintenance for detailed analysis of the device and software status. The prerequisite for this is direct data access to the ZEISS device, the use of the tools offered by ZEISS and, if applicable, a separate service contract.