

A Contract objects

A.1 Maintenance software

The supplier provides the following agreed maintenance services only for the latest version (at the relevant time) of the standard software agreed as the object of maintenance ("maintenance software") in return for the agreed remuneration. If, in the contract, third-party software is expressly agreed as maintenance software, the limitations there described apply.

The supplier will supply the following maintenance services:

A.2 Fault management

2.1 Contractual services

The supplier will record fault notifications by the customer, allocate them to the appropriate fault categories and, on the basis of this allocation, carry out the agreed measures to analyse and correct faults.

Fault management does not include services in connection with use of the maintenance software in unapproved environments or with modifications of the maintenance software by the customer or third parties.

2.2 Acceptance of fault notifications from the customer

The supplier will accept orderly fault notifications by the customer during normal business hours and record them with an appropriate reference. On request by the customer, the supplier will provide confirmation to the customer of receipt of the fault notification, stating the allocated reference.

2.3 Allocation to fault categories

In the absence of an agreement to the contrary, the fault notifications received will after initial review be allocated by the supplier to one of the following categories:

a) Serious fault

The fault is attributable to a defect in the maintenance software which means that use of the maintenance software is impossible or subject to serious limitations. The customer cannot reasonably be expected to solve this problem itself or therefore to carry out the urgent tasks required.

b) Other fault

The fault is attributable to a defect in the maintenance software which substantially restricts use of the maintenance software by the customer without constituting a serious fault.

c) Other notifications

Fault notifications which are not covered by categories a) and b) are classified under other notifications. Other notifications are handled by the supplier solely in accordance with the agreements entered into in this regard.

2.4 Execution of fault correction measures

In the case of notifications of serious faults and other faults the supplier will on the basis of the circumstances reported by the customer promptly initiate measures, initially to localise the cause of the fault.

If initial analysis shows that the reported fault is not attributable to a defect in the maintenance software, the supplier will promptly notify this to the customer.

The supplier will otherwise initiate appropriate measures for further analysis and correction of the reported fault or – in the case of third-party software – pass on the fault notification to the distributor or manufacturer of the maintenance software, together with the results of its analysis and a request for assistance.

In the case of measures available to the supplier for circumvention or correction of a defect in the maintenance software, action instructions or corrections to the maintenance software will be promptly made available to the customer by the supplier. The customer will promptly take over such measures to circumvent or correct faults and will promptly report to the supplier again on any defects remaining after their implementation.

A.3 Provision of new versions

3.1 Contractual services

The supplier will provide the customer with updates of the maintenance software to keep it up to the latest status and prevent faults. These will include technical modifications/ improvements and minor functional additions/improvements. In addition, the supplier will for this purpose give the customer patches with corrections to the maintenance software and other measures to circumvent possible faults. These updates of the maintenance software are together described as "new versions".

In the absence of an express agreement to the contrary, the maintenance service does not include the provision of upgrades with major functional additions or new products or commitments to refine the maintenance software.

3.2 Duties and rights in the case of new versions

The supplier will provide the customer with new versions of the software. The customer will without delay examine the new versions and report discernible defects in accordance with § 377 of the German Commercial Code/HGB. Faults and defects will be handled in accordance with item A 2 above.

In cases where the supplier has provided a new version to the customer, it will also continue to maintain the old version for a reasonable transitional period, generally not in excess of three months.

The customer has defect claims with respect to the new versions only if reported defects can be reproduced or otherwise proven by the customer. With regard to the notification of defects, item 3.2 of CONET's AV applies in particular.

If the customer has justified defect claims, it is initially entitled only to subsequent performance within a reasonable time. At the choice of the supplier, subsequent performance consists either of repair or delivery of replacement software. In its choice, the supplier will take reasonable account of the customer's interests.

A.4 Hotline facility

4.1 Contractual services

The supplier will set up a contact facility (hotline) for the customer. This will handle customer queries in connection with the technical requirements and conditions for use of the maintenance software and with individual functional aspects.

The hotline will not provide any services in connection with use of the maintenance software in unapproved environments or with modifications of the maintenance software by the customer or third parties.

4.2 Acceptance and processing of queries

Towards the supplier the customer will nominate only personnel with appropriate specialist and technical qualifications to deal internally with customer queries from users of the maintenance software. Only the personnel nominated to the supplier by the customer will address queries to the hotline; for this purpose it will use forms provided by the supplier. The hotline will accept such queries by e-mail, telefax and telephone during the supplier's normal hours of business.

Orderly queries will be processed, and if possible answered, by the hotline in the normal course of business. In its response, the hotline may refer to documentation and other training material available to the customer for the maintenance software. If the hotline is unable to provide an answer or provide one quickly, the supplier will pass on the query for further handling; this applies particularly in the case of maintenance software which is not manufactured by the supplier.

More extensive hotline services, such as different contact times and deadlines, call availability and on-site availability of the supplier for the customer, must be expressly agreed in advance.

A.5 Additional services

Services in addition to items A 2 to A 4 are not owed under this contract but require a separate agreement with separate remuneration. These may relate for example to additionally agreed on-site availability of the supplier for the customer, advice and support in the case of modified software, clarification of interfaces with third-party systems and installation/ configuration support.

B General regulations

The following regulations apply equally to fault management (A 2), the provision of new versions (A 3) and the hotline (A 4).

B.1 Duration

1.1 In the absence of an agreement to the contrary, the maintenance contract starts on delivery in accordance with the contract for provision of the standard software (item 1 of CONET's VU).

1.2 At the end of any minimum duration which may be agreed, the maintenance contract may be terminated with three months' prior written notice up to the end of a calendar year, but for the first time as at the end of the calendar year following the year in which the contract is entered into. The contract may furthermore be terminated by the supplier or the customer without prior notice if there is good reason.

1.3 Declarations of termination are effective in written form only.

B.2 Remuneration

2.1 Flat-rate remuneration

Remuneration for maintenance services will be paid by the customer on an ongoing flat-rate basis. In the accounting period, the maintenance remuneration is payable in advance and will be billed by the supplier to the customer at the start of the accounting period. The accounting period is generally the calendar year. If the contract commences during an accounting period, remuneration is payable on a pro-rated time basis and will be billed on exchange of contract.

2.2 Remuneration for additional services

Remuneration for additional services not covered by the flat-rate remuneration is in accordance with item 1.1 of CONET's AV.

2.3 Adjustment of remuneration

The remuneration may be adjusted annually by the supplier in line with general list prices. The customer has a right of termination if the remuneration rates increase by more than 10%.

B.3 Utilisation rights

The customer's utilisation rights to new versions and other corrections to the maintenance software are in line with the utilisation rights to the preceding version of the maintenance software. With regard to utilisation rights, the rights to new versions and other corrections replace the rights to the preceding versions and other corrections after a reasonable transitional period of not more than one month as a general rule. The customer is entitled to archive a duplication item.

B.4 Duties of the customer

4.1 The customer will inform the supplier promptly about changes in the utilisation environment. In addition, the customer will ensure that the maintenance software is used only in an environment which is approved and which is supported by the maintenance software.

4.2 In the absence of an agreement to the contrary, all documents, information and data provided to the supplier will be additionally kept by the customer in such a way that they can be reconstructed in the event of damage to or loss of data media.

B.5 Handover

To the extent that software is handed over within the parameters of these conditions and in the absence of an agreement to the contrary, this will take place in the same way as other provision of the maintenance software for customer use

B.6 Data protection

To the extent that the supplier has access to person-related data stored on systems of the customer, it will act exclusively as a contracted data processor (§ 11 (5) of the Federal Data Protection Law/BDSG) and process and use this data only for the purpose of executing the contract. The supplier will observe the customer's instructions about handling this data. The customer will bear any disadvantageous consequences of such instructions with regard to contract execution. Details with regard to the handling of person-related data will be agreed in writing by the contractual partners to the extent required by § 11 (2) BDSG or other legal norms.

B.7 Application of CONET's AV

The General Contractual Terms (AV) of CONET apply on a supplementary basis.