

# General Terms and Conditions of Kern AG (Software Maintenance)



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### § 1 Subject Matter of Contract

(1) The subject matter of the contract is the provision of maintenance services for Kern AG's software in the working environment and in the authorized scope of use as described in the Maintenance Agreement.

(2) The following is not part of the contractual maintenance services:

- Adjustments due to changes in the client's technical environment, for example due to hardware or operating system changes or due to special or additional requests by the client.
- Remediation of malfunctions caused by actions for which Kern AG is not responsible, but which are in particular due to improper handling by the client, actions of third parties, environmental conditions, defective hardware, power supply malfunctions or force majeure.
- Establishing or maintaining the interoperability of the contractual software with other software not covered by the Maintenance Agreement.
- Maintenance and servicing of the client's hardware.

### § 2 Maintenance Services

(1) The maintenance services to be provided by Kern AG include:

- Support of emerging malfunctions or problems with the usual software use (support).
- Elimination of reported errors in the software (corrections).
- Updates and extensions of the software (adaptations and optimizations).

(2) Kern AG provides maintenance services in the following form:

- Telephone support for the persons named by the client as first level support in accordance with § 3 para. 3 in the event of malfunctions or operating problems with the software.
- Analysis of the malfunctions and errors reported by the client within the software.
- Correction of reported reproducible program errors.
- Provision of the latest program versions in the form of updates (free of charge) and new versions (subject to a charge at preferential conditions).

(3) The above maintenance services also apply to further License Material like auxiliary programs, library, database and example files as well as application description and further documentation material (documentation) accompanying the software in accordance with the License Agreement.

(4) The maintenance services of Kern AG do not include:

- Installation of new program versions.
- Correction of reported non reproducible program errors.
- Training services.

### § 3 Cooperation Obligations of the Client

(1) The client will describe support requests and error reports including their basic setup conditions in such a way that the malfunctions and errors can be reproduced by Kern AG. The inquiry or report can be made in German or English, in writing, by e-mail, fax or telephone.

(2) Upon request, the client shall provide Kern AG with data, protocols or written defect reports, insofar as these are necessary or suitable for error analysis.

(3) The client designates to Kern AG competent and responsible persons, who perform the corresponding functions of first level support at the client's site and who are available to Kern AG as exclusive contact persons (service channel). It is the task of these persons to record the user information and to forward it to Kern AG in a prepared form or, in case of recurrence, to answer directly, to provide information to Kern AG, to make decisions about remedies and to implement them. The client can informally communicate changes to the responsible persons by letter or e-mail.

(4) The client grants Kern AG the necessary access to the SAP systems in question, also by remote access at the request of Kern AG.

(5) The client is obliged to carry out regular and proper data backups on its own and to properly maintain and service the remaining software and hardware environment.

### § 4 Service Times

(1) Kern AG accepts support requests and error reports by telephone during the support hours specified in the Maintenance Agreement.



(2) Support services are provided within a reasonable time within the support hours.

(3) Kern AG responds to error messages according to the tiered response times specified in the Maintenance Agreement.

(4) The response to error reports is either in the form of correction of the error (also by updates) or another solution (e.g. bypassing the error) or by a suggestion on how to proceed if the required analysis and efforts to correct the error not successful. Kern AG is then further obliged to strive for a quick solution.

(5) Updates will be made available as soon as they are released. The delivery takes place via download via the Internet.

#### **§ 5 Maintenance Fee**

(1) The maintenance fee to be paid by the client including the statutory value added tax (VAT) is due quarterly in the middle of each quarter and is payable without deduction within 30 days of invoicing.

(2) Offsetting and withholding against the claims of Kern AG is only permissible in the case of undisputed or legally binding counterclaims; the client's rights to claim for damages remain unaffected.

#### **§ 6 Old Versions**

(1) Maintenance in the form of updates and compliance with response times are only to be provided for the latest version of the software.

(2) If the client continues to use a previous version of the software, Kern AG may, after a period of three years following the release of a newer version, limit its maintenance services to referring the client to change to a newer version.

#### **§ 7 Defects**

(1) Kern AG is liable for defects in quality and defects in title in accordance with the statutory regulations. However, if Kern AG fails to cure a defect related to maintenance services, then the client's right to withdraw from the contract will be replaced and superseded by the right to extraordinarily terminate the Maintenance Agreement without notice based on good cause. Whenever the client has a right to reduce the compensation owed under a Maintenance Agreement, then any such price reduction claim will relate solely to the agreed maintenance fees. Any defects in the maintenance services will not impact the License Agreements related to the licensed software.

(2) The warranty period for defects is one year. The warranty period for client's claims based on Kern AG's breach of its duties to advise or consult under a Maintenance Agreement is one year. Notwithstanding the foregoing, the regular statutory limitation periods apply if Kern AG is liable for any intentional acts or omissions, fraud, gross negligence, product liability according to the German Product Liability Act (ProdHaftG), the lack of a certain quality guaranteed by Kern AG as well as for losses based on an injury to life, body or health. The warranty period commences according to the applicable statutory provisions.

#### **§ 8 Limitation of Liability**

(1) Kern AG is liable for damages, which are based on intent or gross negligence or fraud or which result from an accepted guarantee of a certain quality, according to the statutory regulations.

(2) In the case of a slightly negligent violation of an essential contractual obligation, Kern AG is only liable to a limited extent for the compensation of damages typical and foreseeable for this type of contract. Essential contractual obligations are those whose violation endangers the achievement of the purpose of the contract or whose fulfillment makes the proper execution of the contract

possible in the first place and on whose compliance the client regularly relies and may rely on.

(3) Other liability for slight negligence is excluded.

(4) Kern AG is not liable for lack of economic success. No liability is assumed by Kern AG for the loss of data if and to the extent that this could have been avoided by ongoing data backup measures at reasonable cost.

(5) Claims due to injury to life, body or health or based on the German Product Liability Law (Produkthaftungsgesetz) remain unaffected.

#### **§ 9 Duration, Termination**

(1) The Maintenance Agreement begins with the productive use of the software in the client's relevant productive SAP system.

(2) The Maintenance Agreement is entered into for an indefinite period of time and can be terminated ordinarily with three months' notice to the end of a calendar year, but no earlier than twelve months after the beginning of the term. Notice of termination must be given in writing and must be received by the other party in due time.

(3) The right to an extraordinary termination for good cause remains unaffected.

(4) Further reasons for the early termination of the contract can arise in the event of a price adjustment in accordance with section 1.3 of the Maintenance Certificate.

#### **§ 10 Final Provisions**

(1) Changes and additions to these GTC (Software Maintenance) and the Maintenance Agreement must be made in writing.

(2) Should individual contractual provisions be or become invalid in whole or in part, the remainder of the contract shall remain valid. The loophole shall be replaced by a clause that comes closest to the loophole in terms of content and economic effect.

(3) Place of fulfillment and exclusive place of jurisdiction is the registered office of Kern AG (Freiburg i. Br.).

(4) German law applies to the exclusion of conflict of laws and the UN Sales Convention.

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