

EMAG General Terms and Conditions of Maintenance for Software Products (as of August 2021)

1. Subject Matter

- 1.1. These General Terms and Conditions of Maintenance for Software Products shall apply to maintenance services performed by EMAG GmbH & Co. KG or the EMAG Group Company named in the order form ("**EMAG**") for all EMAG Industry 4.0 Software Products purchased or leased by the Customer.
- 1.2. Deviating, conflicting or supplementary general terms and conditions of the Customer shall not become part of the contract, even if EMAG is aware of them, unless their validity is expressly agreed to in writing.
- 1.3. The services of EMAG are exclusively directed at entrepreneurs within the meaning of Section 14 para. 1 German Civil Code (BGB), i.e. natural or legal persons or partnerships with legal personality, who or which when entering into a legal transaction, act in exercise of his or its trade, business or profession.

2. Subject and Scope of Services

- 2.1. Subject of the maintenance services performed by EMAG is the Software delivered to the Customer on the basis of the General Terms and Conditions of Licensing for On Premise Software specified in the order form.
- 2.2. Maintenance of the Software can generally only be ordered for all Software Products delivered to the Customer in their entirety in accordance with Section 2.1. Maintenance performances for individual Software licenses is excluded.
- 2.3. Under this agreement, the Software provided is only to be maintained in the current version. A new version contains the respective current updates and new releases and is identified by the number in front of the dot (for example 2.0) ("**Version**"). Individual patches or releases are marked by the number behind the dot (for example 2.1), "**Update**". The Customer is not entitled to claim that EMAG maintains an older and the current version at the same time. Any maintenance beyond this requires a separate individual agreement.
- 2.4. The maintenance for the Software by EMAG include the following services:
 - Remedy of defects and application support in case of Software malfunctions ("bug fixing");

- Delivery of releases and patches for the Software (Updates);
- Delivery of new program versions (Upgrades);
- Provision of a service hotline (1st Level Support)

2.5. The following services are not subject of this agreement unless agreed otherwise:

- General services such as instruction and training services;
- Individual adaptation of the standard Software (customizing), programming of interfaces, etc.
- Remedy of defects and damages caused by improper handling of the Software by the Customer, his performing agents or third parties not authorized by EMAG,
- Remedy of defects and damages caused by force majeure or other circumstances for which EMAG is not responsible,
- Modifications caused by the Customer during installation or configuration of the Software.

2.6. EMAG shall provide all maintenance services as services within the meaning of §§ 611 et seq. German Civil Code (BGB), unless otherwise agreed between the parties.

3. Remedy of Defects

3.1. EMAG shall remedy any defect of the Software notified by the Customer within a reasonable period of time in accordance with the technical possibilities given.

3.2. The manner and method of remedy of defects shall be at EMAG's discretion. If EMAG offers the Customer patches, bug fixes or a new program version for the avoidance or remedy of errors, the Customer shall adopt these (if and as soon as it is reasonable) and install them on his hardware in accordance with EMAG's installation instructions.

3.3. A defect shall be deemed to exist if the Software does not have the functionalities specified in the product description for the contractually intended system environment and if this has more than an insignificant effect on the suitability of the Software for the contractually intended use.

- 3.4. Occurring defects must be reported via 1st level support (Section 6). EMAG will classify the occurred defect as High Priority, Medium Priority or Low Priority with due consideration of the Customer's interests. EMAG will start remedy of the defect within the agreed Response Time after receipt of the defect report. The Response Time starts with the information about the defect provided by the Customer to EMAG on the agreed communication way. The Response Time shall be deemed to be the period of time within the support time, which lies between the date of receipt of the defect report and the beginning of the defect remedy performance by EMAG. The Response Time shall only apply if the Customer complies with his obligations to cooperate and if the error is within the sphere of influence of EMAG.
- 3.5. Depending on the classification of a defect, the following Response Times shall apply:
- (i) High Priority - Business Preventing Defect:

A Business Preventing Defect exists if the use of the Software is impossible or severely restricted, for example, due to malfunctions, incorrect work results or response times, and this error cannot be circumvented with reasonable organizational measures.

Response Time: 4h
 - (ii) Medium Priority - Business Hindering Defect:

A Business Hindering Defect exists if the use of the Software is not impossible or seriously restricted, for example, due to malfunctions, incorrect work results or reaction times, but the use restriction is not insignificant and cannot be circumvented by reasonable organizational or other commercially reasonable measures.

Response Time: 16h
 - (iii) Low Priority - Other Defects:

Other Defects exist if the use of the Software is not directly or significantly impaired, such as in the event of inconvenient defined basic settings or missing "nice-to-have functions".

Response Time: 72h

4. Upgrades

- 4.1. EMAG endeavors to continuously develop the Software. Within the scope of this agreement, functional extensions and adaptations may therefore be made in the form of new program versions ("**Upgrades**") of the Software. However, there is no obligation to provide Upgrades.
- 4.2. Individual further developments can be ordered by the Customer against separate remuneration.

5. Services not owed

- 5.1. EMAG shall be released from the obligation to provide maintenance services without this having any influence on the obligation to pay the agreed remuneration if the Customer refrains from installing the respective current or previous version as well as from delivered problem solutions of the Software, unless the delivered versions or problem solutions are defective.
- 5.2. Excluded from the maintenance service are repairs or increased expenditure for the maintenance of the Software which became necessary due to use in breach of contract, in an divergent application environment than agreed, improper use, external influence, force majeure or similar circumstances, Software modifications by the Customer contrary to the contract or maintenance technically performed by others than EMAG without the prior written consent of EMAG in each case.

6. 1st Level Support

- 6.1. EMAG will advise and support the Customer by telephone or other remote communication channels with regard to the remedy of defects, defect prevention as well as defect avoidance. Application support or instruction in the Software is not subject of the Software maintenance services. The performance of services shall take place from the business premises of EMAG. The performance of services at other service locations can be agreed separately between the parties if necessary.

- 6.2. Support is available to the Customer Monday to Friday from 7:00 am to 5:00 pm by telephone (07162-174300) or by e-mail (service.salach@EMAG.com). Public holidays in Baden-Württemberg are excluded.

7. Rights of Use

Insofar as EMAG makes Software available to the Customer on a permanent basis under this agreement, EMAG grants to the Customer the rights of use to the extent such rights have been granted to the Software specified in the order form on the basis of the General Terms and Conditions of Licensing for On-Premise Software.

8. Customer's Obligations

- 8.1. The Customer shall report faults, defects and damages without delay. He shall cooperate in the remedy of defects by providing employees, information, rooms, devices, programs and telecommunication equipment as necessary, properly documenting the data processing procedures, securing the data in accordance with the state of the art and recording the defective circumstances as accurately as possible.
- 8.2. The Customer shall keep employees who handle the Software trained to an appropriate extent.
- 8.3. The Customer shall allow EMAG access to the Software via data lines. He shall establish the necessary connections for this purpose.

9. Remuneration, Terms of Payment

- 9.1. In the event of a Software Lease, the maintenance fee is included in the license fee to be paid annually. The Customer owes the remuneration specified in the order form for the granting of the rights to use the Software and the maintenance of the Software.
- 9.2. In the event of a Software Purchase, the amount of remuneration shall be based on the prices stated in the price sheet "Software Maintenance". Unless otherwise

agreed, the maintenance fee per calendar year shall be 50% of the license fees agreed in the Software license agreement.

- 9.3. The remuneration shall be subject to the applicable statutory value added tax.
- 9.4. In the event of a Software Purchase, the maintenance fee shall be paid annually in advance for the calendar year, for the first time upon conclusion of the agreement. Calendar years commenced shall be remunerated on a pro rata basis.
- 9.5. The remuneration is due and payable within 14 days after receipt of the invoice.
- 9.6. Offsetting by the Customer with counterclaims is not permitted unless the counterclaim is undisputed or has been legally established.

10. Termination of the Software Maintenance

- 10.1. In the event of a Software Purchase, the maintenance services shall have a term of twelve (12) months. If the maintenance agreement is not terminated in writing by either party three months prior to the expiry of the term, it shall be extended by a further year in each case.
- 10.2. In the event of a Software Lease, the term is based on the minimum term specified in the order form for the Software.
- 10.3. The right of both parties to terminate for good cause shall remain unaffected. Termination must be declared to the other party in writing stating the reasons.

11. Claims for Defects

- 11.1. Defects reported to EMAG by the Customer during the term of the maintenance agreement shall be remedied by EMAG within the scope of remedy of defects pursuant to Section **Fehler! Verweisquelle konnte nicht gefunden werden**.these General Terms and Conditions of Maintenance. Beyond that, there shall be no claims for supplementary performance for defects as to quality during the term of the maintenance agreement.
- 11.2. In the event of an infringement of third party intellectual property rights for which EMAG is responsible by the services provided under this agreement, EMAG shall be entitled at its own discretion (i) to eliminate the third party rights impairing the contractual use of the Software or their assertion by taking appropriate measures

or (ii) to modify or replace the Software in such a way that it no longer infringes third party rights, if and to the extent that the warranted functionality of the Software is not impaired thereby. Section 12 of these General Terms and Conditions of Maintenance shall apply to the assertion of claims for damages or expenses.

11.3. Warranty claims become time-barred within one year.

12. Liability

12.1. In all cases of contractual and non-contractual liability, EMAG shall be liable only in accordance with the following provisions:

- (i) in the event of intent in the full amount,
- (ii) likewise in the event of gross negligence as well as for losses from the lack of a quality for which EMAG has given a written guarantee;
- (iii) in other cases: only for the breach of a material contractual obligation if the purpose of the agreement is jeopardized, but always limited to the amount of the foreseeable damage. The Customer and EMAG agree that the contract-typical foreseeable damage from breaches of obligations under this agreement shall not exceed the amount of the annual maintenance fee owed under these General Terms and Conditions of Maintenance. This shall also apply in the event of negligent breaches of obligations by EMAG's legal representatives, executive employees or simple vicarious agents.

12.2. The limitations of liability pursuant to Section 12.1 not apply in the event of liability for personal injury and liability under the German Product Liability Act (ProdHG).

12.3. EMAG is free to raise the objection of contributory negligence.

12.4. Apart from that, any liability for damages on the part of EMAG, irrespective of the legal basis, is excluded. The above limitations of liability also apply to claims for reimbursement of expenses.

12.5. Section 11.3 apply mutatis mutandis to the limitation period, with the proviso that the statutory limitation period shall apply to claims under Section 12.1 lit. **Fehler! Verweisquelle konnte nicht gefunden werden.** and Section 12.1 The limitation period pursuant to sentence 1 shall commence at the point in time specified in Section 199 para. 1 of the German Civil Code (BGB). It shall commence at the

latest upon expiry of the maximum periods specified in Section 199 para. 3 and 4 of the German Civil Code (BGB).

13. Confidentiality and Data Protection

- 13.1. The contracting parties are obligated to treat all Business Secrets within the meaning of Section 2 No. 1 of the German Act on the Protection of Business Secrets (GeschGehG) of the respective other party, of which they become aware in the course of the execution of the contract, as strictly confidential and to use them only for the contractually agreed purposes. Both contracting parties shall be obliged to contractually bind their employees involved in the projects as well as third parties, if any, to confidentiality accordingly. Upon request, these non-disclosure agreements shall be presented to the other party. The contracting parties shall take appropriate confidentiality measures to keep the Business Secrets of the other party confidential.
- 13.2. If information is requested from a public institution which affects Business Secrets of the other party, this party must be informed immediately and, if possible, before the information is released to the public institution.
- 13.3. The rights and obligations in Section 13.1 and Section 13.2 shall not be affected by the termination of the agreement. Both contracting parties shall be obliged to return or destroy confidential information of the other party upon its request upon termination of the agreement.
- 13.4. The foregoing obligations shall not apply to Business Secrets which (i) were already known or generally accessible to the other party at the time of its communication by the other party; (ii) became known after the day of receipt without a fault of the other party; (iii) became known after the day of receipt from a third party in a manner which is not unlawful and without restriction as to secrecy or exploitation; (iv) has been independently developed by a party without use of the other party's Business Secrets; (v) is required to be disclosed by law, governmental order or court order, provided that the disclosing party promptly notifies the other party and assists the other party in defending such order; or (vi) is permitted to be used or disclosed by the other party pursuant to the extent of mandatory legal provisions or the provisions of this agreement.

- 13.5. EMAG complies with the rules of data protection, especially when EMAG is granted access to the Customer's operation or hardware and Software. EMAG does not intend to process or use personal data of the Customer. If access by EMAG to personal data cannot be excluded, the Customer will conclude an agreement with EMAG in accordance with the requirements of Article 28 of the EU Data Protection Regulation (GDPR) and inform EMAG of this requirement in writing.

14. Final Provisions

- 14.1. Should one or more provisions of these General Terms and Conditions of Maintenance be or become invalid or should General Terms and Conditions of Maintenance contain omissions, the validity of the remaining provisions shall remain unaffected. In this case, the contracting parties undertake to work towards a valid agreement that comes as close as possible in economic terms to the invalid or missing agreement, if had the contracting parties known of its invalidity or absence.
- 14.2. There are no ancillary agreements to these General Terms and Conditions of Maintenance. Amendments and supplements to these General Terms and Conditions of Maintenance must be made in writing. This formal requirement can only be waived by written agreement.
- 14.3. These General Terms and Conditions of Maintenance and all obligations arising therefrom shall be governed by and construed in accordance with the laws of the Federal Republic of Germany, excluding its conflict of laws principles and the UN Convention on Contracts for the International Sale of Goods (CISG).
- 14.4. The exclusive place of jurisdiction for all legal disputes arising from or in connection with the EMAG General Terms and Conditions of Maintenance for Software Products shall be the registered office of EMAG GmbH & Co. KG, Austraße 24, 73084 Salach, Germany, or the registered office of the EMAG Group company named in the order form. However, EMAG shall also be entitled to sue at the Customer's general place of jurisdiction.

14.5. These General Terms and Conditions of Maintenance are executed in the German and English languages. In the event of any inconsistencies, the German version shall prevail.

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