Specific terms and conditions for software maintenance

ementexx GmbH

1. Scope of application

1.1 The following specific terms and conditions for software maintenance apply in addition to the general terms and conditions, and govern all contracts concluded between ementexx GmbH ("ementexx") and the customer ("customer") for maintenance or servicing of software ("maintenance software").

1.2 These terms and conditions shall also apply to all future transactions involving software maintenance services provided by ementexx under the terms of the contract, even if they are not expressly agreed upon again.

1.3 The software to be maintained can be delivered to the customer and run by the customer ("on premise"). Alternatively, the software can be provided by ementexx as a SaaS solution ("cloud"). In the latter case, the specific terms and conditions for software hosting also apply.

1.4 General terms and conditions of the customer that conflict or differ from these specific terms and conditions will only apply if they have been expressly agreed to in writing by ementexx. These specific terms and conditions shall apply even if ementexx provides the service to the customer while being aware of conflicting or deviating terms and conditions of the customer.

2. Subject matter of the contract

2.1 ementexx shall provide the following services to ensure that the maintenance software is always working, ready for use and up-to-date:

- the delivery and/or provision of upgrades to the maintenance software, including significant functional enhancements
- the delivery and/or provision of any necessary updates of the maintenance software, including technical modifications and improvements as well as minor functional upgrades and improvements
- the delivery and/or provision of patches, including maintenance software fixes and other workarounds for potential faults
- the elimination of errors after the warranty has expired by providing - at the option of ementexx - patches or updates of the maintenance software
- adjustments to maintenance software to comply with changing legal requirements

2.2 The contractual scope does not include necessary changes to the maintenance software due to changed circumstances and framework conditions outside the sphere of control of ementexx. Furthermore, this agreement does not cover changes to the maintenance software due to legal requirements that can only be realised by partial or complete reprogramming of the maintenance software.

2.3 Maintenance only covers software which the customer is entitled to use.

3. Troubleshooting

3.1 Any errors that occur will be assigned to an error class by mutual agreement. If an agreement cannot be reached, ementexx will decide on the error classification at its own discretion.

3.2 Error classes within the meaning of the above provisions are as follows:

- Class 1 error: The software cannot be used at all or only to a very limited extent or essential agreed service specifications are unavailable.
- Class 2 error: While the core functionality of the software is provided, a sub-module is reporting one or several significant errors that prevent or significantly restrict work with this module.
- Class 3 error: While the core and main functionality of the software is provided, there are errors or missing agreed specifications in sub-functions or sub-modules that do not fall into error class 2.
- Class 4 error: Errors or unavailability of agreed service specifications which only marginally affect the functionality of the software (e.g. spelling errors on the screen or in printouts).

3.3 Depending on the error classification, the response times during ementexx's business hours are as follows:

- Class 1 error: 8 hours
- Class 2 error: 24 hours

The response time starts upon receipt of an email message sent to support@ementexx.com.

3.4 The following, in particular, will not be regarded as an error:

- any fault caused by improper handling of the software;
- where the cause of an error is not in the software, but other circumstances outside the sphere of influence of ementexx (e.g. system crash, etc.)

3.5 If ementexx has provided troubleshooting services after the notification of an error and if there is no material defect, the customer has to cover the resulting costs. The calculation of the costs is based on the remuneration rates of ementexx valid at the time of the service provision.

3.6 ementexx will generally remedy the problem remotely (VPN connection or remote desktop sharing) or by telephone (by giving instructions to the customer). On-site troubleshooting is not covered by the flat-rate fee set out in Section 6.1; however, on-site troubleshooting can be arranged with ementexx for a separate fee.

3.7 Where ementexx takes action based on an error report, but the error fails to materialise, ementexx will be entitled to bill the customer separately for any resulting costs incurred; this does not apply if the customer could not have reasonably been aware that this was not a defect, the error is not reproducible or otherwise demonstrable as a defect.

4. Cooperation and other obligations of the customer

4.1 To the extent reasonable practicable, the customer shall provide ementexx with the necessary assistance and create in their sphere of control all the conditions necessary for the proper implementation of the contract, and in particular,

- to grant the employees employed by ementexx - as far as necessary - free access to the maintenance software or the system on which it is installed at the agreed time
- to provide the employees of ementexx with the information necessary for their activities in good time
- to provide the employees of ementexx, as far as they have to work in the customer's company to meet ementexx's obligations under the contract, with suitable workspace, including the necessary work equipment
- to ensure that expert personnel is available to assist ementexx throughout the project.
- to report any identified defects in writing in sufficient detail in an intelligible form, providing all the information needed to identify the defect.
- to assign errors to error classes by mutual agreement with ementexx as laid down in Section 3.2
- where defects are identified, the information provided to ementexx shall cover, in particular, any steps taken that led to the occurrence of the defect, its effects and frequency.
- to provide ementexx with remote access to their systems free of charge and assist ementexx with error analysis.

4.2 If the customer does not fulfil their cooperation obligations in full, in a timely manner or not in the agreed manner, the consequences resulting therefrom (e.g. delays, additional costs) shall be borne by the customer. Agreed deadlines shall be postponed by the duration of the delay for which the customer is responsible, plus a reasonable lead period.

5. Rights of use

5.1 The customer's rights of use for new versions and other maintenance software fixes reflect the usage rights to the respective previous versions of the maintenance software.

5.2 The rights to the new versions and other fixes will replace the rights to the previous versions and other maintenance software fixes after an appropriate transition period - which will normally not exceed 30 days.

5.3 All other rights are reserved to ementexx.

6. Remuneration

6.1 The remuneration for the maintenance services in accordance with Section 2 shall amount to 18% of the licence list price or software development costs per year for on-premise software ("on-premise"). In the case of SaaS ("cloud") software solution, this remuneration is included in the monthly usage fees.

6.2 ON-PREMISE ONLY: The fee is billed annually in advance, on 01 January of each calendar year; if the contract commences during the year, the fee for the remaining period of the first year is calculated on a pro rata basis from the start date.

6.3 CLOUD ONLY: The fee for the maintenance services is covered by the monthly fees.

7. Term of the contract and notice period

7.1 The software maintenance agreement shall commence upon delivery ("on-premise") or provision ("cloud") of the software to the customer ("start date") and shall run for an indefinite period of time.

7.2 The software maintenance contract can be terminated by either party by giving a 3 months' notice with effect from the end of a calendar year, but only after 3 years have elapsed (minimum contract term).

7.3 In the event of a licence upgrade or custom further development of the maintenance software, the agreed minimum term set out in Section 7.2 shall start to run again from this date.

7.4 The foregoing is without prejudice to the right to terminate the agreement for good cause. Good cause is any circumstance that renders the continuation of the contractual relationship until its expiry or termination with notice in good faith unreasonable for the party wishing to terminate the agreement. Good cause is given, in particular:

- if the other party culpably breaches one of its material obligations under this contract and does not remedy the breach after having been given a reasonable time to do so;
- if one party takes actions that are likely to cause significant damage to the reputation of the other party.

7.5 Any notice of termination must be sent by registered letter and must be received by ementexx at the latest on the third working day of the first month of the period of notice.