

Maintenance conditions for the maintenance and support of software from Stampack GmbH

§1 Subject of the maintenance conditions

1. Stampack GmbH provides the services for the maintenance and support of the software listed in the maintenance contract in accordance with the terms of the maintenance contract and the services described in these maintenance terms.
2. The maintenance contract is concluded upon receipt by Stampack GmbH of the contract form signed by the customer.
3. The maintenance of computer hardware is not subject of this contract.

§ 2 Scope of maintenance services

1. The maintenance services include the continuous improvement (updating) of the products, troubleshooting, advice and support for the customer in the event of program errors; in detail:
 - a) Product updates, consisting of a corresponding data carrier and the associated documentation.
 - b) Emergency service in the event that the customer reports a program error that has a direct influence on the productive use of the product. The emergency service provides for an employee of Stampack GmbH to investigate the reported error and offer the customer an alternative solution.
 - c) User support ("telephone hotline"), consisting of a telephone consultation of the customer in case of problems regarding the application of the software as well as in case of program errors that may have to be recorded. Stampack GmbH's "hotline" is available to the customer from Monday to Friday between 9:00 a.m. and 12:00 noon and between 1:00 p.m. and 5:00 p.m.
2. Contractual maintenance services do not include the following services:
 - a) Maintenance services that become necessary through the use of the software on a hardware system other than that recommended by Stampack or under a different operating system.
 - b) Maintenance services after an intervention of the customer in the program code of the software.
 - c) Maintenance services regarding the cooperation of the contractual software with other computer programs, which are not subject of this maintenance contract.

§ 3 Maintenance period

1. The term of the maintenance contract defines the maintenance period and begins on the date agreed in the maintenance contract.
2. The maintenance contract is concluded for an indefinite period. The minimum term is one year. It is automatically renewed for a further year if the maintenance is not carried out by the customer or is terminated in writing by Stampack GmbH at least 3 months before expiry.
3. The right to extraordinary termination remains unaffected.

§ 4 Payment

1. The annual maintenance fee can be found in the maintenance contract. The amount is payable in advance without deduction.
2. The maintenance fee can be increased appropriately for the second year and the following years of the maintenance contract term by means of a corresponding written notification by Stampack GmbH to the customer, whereby this notification must be made at least three months before the increase comes into effect. If the increase in the fee is more than 10% in relation to the previous year, the customer may terminate the contractual relationship within 4 weeks of receipt of the notification of the increase.

§ 5 Confidentiality

The customer acknowledges that the software and the associated documents are legally protected objects and trade secrets and undertakes to keep these software and documents secret, which have been made available for its own internal purposes in accordance with the contract.

The customer's obligation to maintain secrecy also includes (without limitation) the obligation to take appropriate steps to ensure that this obligation of secrecy is maintained by its employees.

§ 6 Obligations of the customer to cooperate

1. When describing, delimiting, determining and reporting errors, the customer must follow the instructions given by the Stampack GmbH. If necessary, the customer must use Stampack GmbH checklists.
2. The customer must make every effort to specify his error messages and questions. For this he must refer to competent employees.
3. During necessary test runs the customer is personally present or provides competent personnel for this purpose. Employees, who are authorized to report defects, function extensions, function reductions and to judge and decide on changes in the programme structure. If necessary, other work with the computer system during the time of the maintenance work must be stopped.
4. Before installing the software, the customer must check and back up all data that is processed further.
5. The customer is obliged to make back-up copies on a regular basis and in accordance with the risks involved.

§ 7 Decompilation and program modification

1. The retranslation of the provided program code into other code forms (decompilation) and other types of reverse engineering of the various stages of software production (reverse Engineering) are inadmissible.
2. Copyright notices, serial numbers and other features serving to identify the program must not be removed or changed under any circumstances.

§ 8 Liability

1. Stampack GmbH shall be liable without limitation for damages due to defects of title and lack of warranted characteristics. The liability for initial inability to perform is limited to such damages, with which must typically be expected in the context of a software transfer.
2. In all other respects, Stampack GmbH is only liable without limitation for intent and gross negligence, including of its legal representatives and executive employees. For the fault of other vicarious agents the company is only liable to the extent of the liability for initial incapacity according to the above Paragraph.
3. For other negligence, Stampack GmbH is only liable if a duty is violated, the compliance is of particular importance for achieving the purpose of the contract (cardinal obligation).
In the event of a breach of a cardinal obligation, item 1 sentence 2 shall apply accordingly.
4. The liability for loss of data is limited to the typical recovery effort that would be required for backup copies had been made regularly and in accordance with the risks involved.
5. The above provisions shall also apply in favour of the employees of Stampack GmbH.

§ 9 Warranty

1. Subject to the following special provisions, the following shall apply to defects in the software supplied legal regulations.
2. Defects shall be remedied at the supplier's discretion by repair or replacement.
As a rule, the rectification of defects is carried out by Stampack GmbH providing the customer how to avoid the error that occurs. If this is unreasonable and a bug-fixed program version of the manufacturer is not yet available, a previous program version that does not contain the error will provided.
3. In the event of failure of the repair or replacement delivery, the user may demand a reduction.

§ 10 Duty of inspection and notification of defects

1. The user will inspect the delivered software including the documentation within eight days after delivery in particular with regard to the completeness of the data carriers and manuals as well as the functionality of basic program functions. Defects that are or can be detected during this inspection must be reported to the supplier in writing within a further eight working days. The notice of defects must contain a description of the defects that is as detailed as possible.
2. In compliance with the requirements set out in point 1, defects that cannot be detected in the course of the described proper inspection requirements must be objected to within eight working days of discovery.
3. In the event of a breach of this obligation to examine and give notice of defects, the software shall be deemed to have been the defect in question as approved.

§ 11 Prohibition of assignment

Any assignment of rights or transfer of obligations arising from the maintenance contract and the services described within the scope of these maintenance provisions requires the prior consent of Stampack GmbH.

§ 12 Extraordinary termination

Stampack GmbH has the right to terminate the maintenance contract with immediate effect for good cause, in particular if:

1. the customer makes an assignment in favour of creditors or if a settlement or a liquidator or other comparable third party is appointed.
2. the customer files for bankruptcy or composition.

§ 13 Use, duplication, transfer of the software

With regard to the use, reproduction, transmission of the software, §§ 69 a to 69 g UrhG apply. In addition, the license terms of the software manufacturer must be observed.

§ 14 Choice of law

The parties agree that the law of the Federal Republic of Germany shall apply to all legal relationships arising from the contractual relationship of the maintenance contract.

§ 15 Place of jurisdiction

Karlsruhe is agreed as the place of jurisdiction for all disputes arising from the contractual relationship of the maintenance contract.

§ 16 Final provisions

1. All agreements which amend, supplement or concretise these terms and conditions of sale are contractual conditions, as well as special assurances or agreements require the written form. If they are declared by representatives or other auxiliary persons of Stampack GmbH they shall only be binding if the Company gives its written consent to this.
2. References to the inclusion of the customer's general terms and conditions are hereby expressly contradicted.
3. Should one or more of the above provisions be invalid in whole or in part the validity of the other provisions shall not be affected. The ineffective provision shall be replaced by an effective one which most closely corresponds to the intended purpose. The same shall apply if a gap requiring supplementation arises during the execution of the contract.