



AGB Wartung

Englisch



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General terms and conditions for the software support and maintenance agreement

The following agreement is concluded between the client and sz&p to maintain ZAMIK application software and to support the client during the term of the software support and maintenance agreement:

1.0 Contractual object

Within the framework of this agreement sz&p renders the subsequently accurately described support and maintenance services for the package and/or programme supplied by sz&p and defined in the enclosed scope of performance (subsequently referred to as software).

The corresponding services shall be rendered due to the general terms and conditions for software services as well as the acquisition and license agreements which were accepted by the client by using the software. These apply unless there are deviating regulations in the existing agreement.

For the case that the final customer/user has not concluded this agreement himself with sz&p, he shall acquire all rights of the client towards sz&p resulting from this agreement excluding the right of reduction of compensation, if he also assumes the obligations of the client towards sz&p excluding the payment obligations. In this case the designation "client" also applies to him.

2.0 Contractual object

The following aspects are the precondition for integrating a software support and maintenance agreement:

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2.1

Hardware minimum configuration according to the respectively current description for the system and hardware prerequisites for ZAMIK products

2.2

Disclose the name of the trained employee and his deputy, who is solely authorised as responsible person for the system to make enquiries to sz&p or its representatives with regard to the software.

3.0 Scope of services

3.1 Telephone service (hotline)

Telephone consultation of the client with regard to programme organisational issues as well as questions for programme operation, like for example, restart after power or hardware failure or operating error in the way organised by sz&p (like for example, remote maintenance) within the known sz&p working time.

For enquiries outside the working time a mailbox, a fax machine and a mail address shall be made available to the client. After receiving the notification sz&p will contact the client as quickly as possible and provide or develop solution options.

3.2 Support

Assist and support to remove failures due to errors/malfunctions of the respectively latest version of the software. Restructuring or integration of modifications and improvements regarded as necessary by sz&p for the software including the delivery of the existing documentation.

If the user faces a reproducible problem, which according to the diagnosis of sz&p has been caused by an error in the latest version of the software, sz&p shall remove the error depending on the level of functional impairment of the software and negative impact on the client within a reasonable timeframe. If the client cannot use the software efficiently anymore due to the error,

sz&p shall remove the error after coordination with the client in the shortest possible time or develop/provide an alternative solution.

3.3 Current information

sz&p informs the client about innovations and improvements of the programmes, particularly about legislative, technical and operating system changes which require a modification of the software. Correspondent publications shall predominantly be arranged via www.zamik.de

3.4 Programme changes/ improvements

sz&p provides the client with new programme versions which are developed by the company as a standard if the scope of services does not change.

The new versions of software are delivered to the client as software updates in a machine-readable form on the corresponding data carriers corresponding to the hardware (computer). These updates contain information about corrections, improvements or amendments of the software. If updates are made available as download in the internet, the updates shall not be sent to the customer.

The dispatch costs for the delivery and return of the data carriers shall be at the expense of the client. Hardware modifications or extensions and adaptations of programme sectors which are not subject to the software maintenance agreement that are potentially required due to updates, shall not be object of the agreement

3.5 Operating system change

sz&p shall carry out the necessary adaptations of all user programmes which are shown in the scope of services in connection with the utilisation of changed operating system versions initiated by sz&p in form of delivery of new programme versions. A change of operating system carried out by the client and the resulting necessary programme

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modifications shall not be part of this agreement.

3.6 Programme archiving

sz&p archives the programmes and documentations which are described in the scope of services, whereas the necessary material resources (data carriers) shall be invoiced by sz&p separately, if necessary. In case of damage of the client software sz&p shall make available duplicates. However, the restoration of the client-specific data shall not be object of the existing contract relationship. The client shall be responsible for this archiving.

3.7 Provision of back-up systems

To bridge bottlenecks due to a system failure sz&p shall preferably offer the client back-up systems, if necessary.

3.8 Remote diagnosis

If agreed in the scope of services sz&p shall provide support to the client by means of remote support in a way regarded necessary by sz&p if the corresponding technical prerequisites exist at the client (modem, internet, data protection regulations).

3.9 Additional contracts

sz&p undertakes to process contracts of the client, which are not included in the software maintenance agreement (e.g. new programmes, essential programme changes, system restructuring, among others) with priority compared to contracts of other clients. However, this priority shall only be granted by sz&p if the client announces upcoming projects in good time with the simultaneous binding obligations of contract award.

4.0 Additional services

The following services which are included in this software maintenance agreement shall be rendered by sz&p after separate agreement with the client concerning the respectively valid prices and conditions of sz&p:

4.1

Consultation and support in connection with software which is developed by the client himself.

4.2

Deliver support to remove failures caused by connected hardware components or software, which were not supplied or maintained by sz&p and which are not based on errors of hardware and software supplied by sz&p.

4.3

Support associated with software products of sz&p, which are not part (according to the scope of services) of this agreement.

4.4

The removal of failures which according to the diagnosis of sz&p were not caused by an error in the unchanged form of the software product specified in this agreement, like for example, the destruction or modification of programmes, the destruction of data carriers due to defective hardware components or due to other conditions, which are not caused by sz&p (e.g. . viruses)

4.5

For trainings within the business premises of sz&p, instruction for the handling and operation as well as application of ZAMIK software products under consideration of the scope of services a discount shall be granted to the client for the respectively valid seminar price.

5.0 Services/prerequisites of the client

5.1

The client shall provide the regular backup (archiving) of the operating system, application programmes and files.

5.2

Due to the modifications and improvements carried out within the context of the software maintenance deviations from specifications contained in manuals, brochures, software product descriptions and other software documentations may occur and imply adaptation expenditure for the client for his application software. The client shall ensure that supplied documents and tools, like data carriers, documentations etc. shall constantly be made available for maintenance purposes.

5.3

Before starting maintenance und service the client shall carry out the implementation of a current data backup. The client shall deploy sufficiently qualified and trained personnel for the computer system installed in his office and the used application software, which is indicated in the scope of services.

5.4

At the request of sz&p the client shall make available necessary personnel and material resources free of charge for maintenance works, if necessary. The client shall use the respectively latest version of the software, which was supplied to him by sz&p.

5.5

In case of change to a version, which is not covered by this agreement anymore, for example, due to the scope of improvements, the client shall acquire and use this version. sz&p shall grant an appropriate discount to the client for this new version at his reasonable discretion and especially under consideration of the scope of functions/ services, the

respectively valid price list and the operating lifetime of the outdated version which shall be replaced.

6.0 Compensation

For maintenance services sz&p shall calculate an annual flat rate, which is included in the scope of services for this agreement. The monthly lump sum costs result from the total value of the software integrated in the agreement and its respectively valid list license price.

The invoicing is carried out in advance and without deduction and shall be payable each calendar year for the first time proportionally for the remaining calendar year. For the invoice processing the value-added tax shall additionally be invoiced according to the correspondingly valid rate. The invoice amount shall be paid 10 days after the invoice date, at the latest. If sz&p increases its respectively valid fees after concluding the agreement due to salary or other prime costs increase to more than 10% in total, it shall raise the existing agreed maintenance flat rate correspondingly. If sz&p exercises this right, the client shall terminate the existing contract relationship prematurely at the effective date of increase by means of a registered letter.

If the client orders services which go beyond the maintenance and support according to clause 3, if particular activity is required on site or requested by the client, sz&p shall render such services at its respectively valid fees.

7.0 Warranty

7.1

In case of defective supplied updates sz&p first of all shall be entitled to debug them by means of improvement which shall also be realised by the supply of a new update. If the improvement fails after at least two tests due to the same deficit or if the improvement is not

carried out within a reasonable time, the client shall reduce the maintenance and support compensation until the delivery of an error-free update. Within this context the scope of the other maintenance and assistance services shall be considered.

7.2

The rights of the client resulting from clause 3.2 shall remain unaffected. In case of sustainably insufficient confidence and loss of trust given in a written warning by the client at least once with threat of termination within an adequate period of time, he shall extraordinarily terminate the software support and maintenance agreement.

8.0 Exclusion of claims

8.1

With regard to delay and impossibility the liability of sz&p shall be limited to slight negligence at the violation of contract-essential duties (cardinal obligations), gross negligence and intent on the part of their legal representatives and executives as well as gross negligence and intent on the part of ordinary vicarious agents at the violation of contract-essential duties.

8.2

The liability limitation from clause 1 also applies with regard to the violation of pre- and post-contractual obligations (c.i.c and PFV).

8.3

The liability limitation from clause 1 furthermore shall apply to damage- caused defects as well as inadequate performance.

8.4

Regardless of the previously mentioned regulations sz&p shall be liable to a maximum of four times the total amount of the annual maintenance and support compensation.

8.5

In addition to this the liability of sz&p shall be limited to the damage which is typically expected at the conclusion of the agreement.

8.6

The previously mentioned liability limitations shall not apply to the liability according to the product liability law.

8.7

In case of loss of data sz&p shall only be liable for the scope of damage, which would have occurred at the daily realisation of data backups. Furthermore sz&p shall not be liable if the client has not carried out a data backup before starting the maintenance works in accordance with clause 5.3.

9.0 Term of the support agreement

The existing agreement shall run for an indefinite period. This shall be terminated by both contractual parties with a three-month deadline at the end of the calendar year submitting a registered letter. The minimum term of agreement shall be 24 months. After the expiry of the minimum term of agreement the agreement shall be extended by respectively 12 months without termination.

10.0 Term of the support agreement

Without observing the period of notice sz&p shall terminate this agreement if

10.1

there is a default of payment of more than 30 days.

10.2

additional support expenditure is caused by the fact that the software products or computer systems were handled or modified improperly.

10.3

the support is essentially complicated due to modifications in the software initiated by the client (operating system) or by using software not supplied by sz&p. This shall not apply to cases in which sz&p has agreed with the modifications in advance.

10.4

one of the preconditions mentioned in clause 2.0 and 5.0 including the sub-clauses is not fulfilled anymore.

11.0 Other final provisions/ place of jurisdiction

This contract contains all regulations for the support of ZAMIK software products and shall replace all former agreements. Amendments and supplements of the existing maintenance agreement require the written form to be legally effective. Oral agreements shall not constitute any rights and obligations. The client shall be granted a simple right of maintenance. A transfer to third parties shall be excluded.

If individual regulations of this agreement are null and void, the other provisions shall remain unaffected from this. The contractual parties undertake to replace the null and void regulation by a regulation which comes closest to the economic purpose of the null and void regulation. The place of jurisdiction for both parties is Offenbach. If this regulation is ineffective, the registered office of sz&p shall be agreed as place of jurisdiction. The previously mentioned regulations for the place of jurisdiction shall not apply if the court determines an exclusive place of jurisdiction – like for judicial default actions.