TERMS AND CONDITIONS OF SOFTWARE SUPPORT

1. Subject Matter of Contract Obligation of use of up-to-date releases and versions, discontinuation of Staedtler-Logistics' service obligation, continuity of customer payment obligation

1.1 Staedtler-Logistics is obligated to deliver the selected maintenance services for the software configuration as stipulated in the Software Servicing Contract as well as all further software upgrades in accordance with section 9.5 within the contract period under the following provisions. Deviating, conflicting or supplementary terms and conditions from the customer are not a part of the contract; the provisions of Staedtler-Logistics, as stated herein, apply exclusively.

1.2 Maintenance services can include:

- Customer Support (paragraph 2)
- Remedy of Defects (paragraph 3)
- Release Maintenance (paragraph 4)
- Version Maintenance (paragraph 5)

1.3 Software servicing is rendered exclusively at the domicile of Staedtler-Logistics in Nuremberg by remote maintenance, telephone, fax or other methods, unless otherwise agreed upon.

1.4 Only the current release (on occasion of a change of the operating system) or the current version (updates and further developments) of the software configuration is modified, i.e. the customer is obligated to implement all releases and updates by Staedtler-Logistics over the duration of the servicing contract period. Maintenance of previous versions or previous releases will only be executed by Staedtler-Logistics if the use of more recent versions or releases is unreasonable for reasons beyond of the customer's control. The parties may generally only come to an agreement on additional support for older versions or releases (via hotline support for questions regarding system operation in the form of second level support) against additional payment.

1.5 The customer is required to use the most current releases and versions of the system environment (operating system, database) immediately upon the software for the new releases of the system environment being made released by Staedtler-Logistics – compare section1.4. – in order to receive software servicing from Staedtler-Logistics. Staedtler-Logistics is not obligated to maintain software configuration compatibility with earlier releases of the operating system or database. As soon as the operating system, database or Office products in use at the customer location are no longer maintained by the manufacturer and the customer does not switch to a version that is still maintained, Staedtler-Logistics' obligations arising from this contract are no longer applicable. This also applies to the obligation to render support unless otherwise agreed upon and against additional payment (compare with section 1.4 (without limitation)). The customer payment obligations remain unaffected by the discontinuance of service obligations by Staedtler-Logistics.

1.6 Not applicable.

2. Customer Support

2.1 Content of service
Only the key user(s) who have been named in the Software Servicing Contract to Staedtler-Logistics or their surrogate key user(s) named in that contract, may present questions regarding the application and operation of the software as stipulated in the Software Servicing Contract. In the event that a customer intends to train more than three surrogate key users per key user named, each of which should be given the right to contact Staedtler-Logistics, a separate agreement concerning payment must be reached between the contracting parties.

2.2 Key User
The customer's key user or the trained surrogate key user must fulfill the Training Requirements stipulated in the annex appended to the Software Servicing Contract.

2.3 Other persons entitled to request
Based on a separate agreement reached between Staedtler-Logistics and the contracting party, other trained users may be authorized to directly address Staedtler-Logistics with requests.
These users must fulfill the Training Requirements stipulated in the annex appended to the Software Servicing Contract.

2.4 Undue utilization of customer support
The aim of customer support is to offer support and assistance in the framework of the application and operation of the software as stated in the Software Servicing Contract, but not to replace other services rendered by Staedtler-Logistics, particularly training and seminars, consulting services and installation assistance. Staedtler-Logistics will therefore inform the customer on the dimension of consulting, training and assistance which is considered to be necessary. Occasions for such additional service requirements generally include a change in version or release, data backup or reorganization, personnel changes in the customer company, etc. In the event that a customer rejects any of the services offered and thus makes use of the customer support in an undue manner, Staedtler-Logistics is entitled to charge the customer, after sending a one-time written notice, with the costs arising from such behavior according to the service conditions and prices at Staedtler-Logistics. Thus Staedtler-Logistics does not agree to customer support being used as a replacement for other services.

2.5 Detected defects
In the event that the contracting parties detect defects in the framework of customer support, the defect is treated in accordance with provisions for the remedy of defects.

2.6 Service Time
Customer support services are available during normal business hours at Staedtler-Logistics, namely Monday to Friday from 8:00 a.m. to 5:00 p.m., excepting Nuremberg public holidays.

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3. Defect Correction

3.1 Definition of defects
Defects as defined by these software maintenance conditions are limited to those causing missing or incorrect processing results.

3.2 Defect reporting
Only the system administrator or the surrogate system administrator, who have been named in the Software Servicing Contract, are entitled to report defects to Staedtler-Logistics by telephone, writing (including fax) or as otherwise agreed upon. In the event that a different reporting method has been expressly agreed on in the Software Servicing Contract, the customer shall exclusively use the type of notification stated therein.

Defects detected by the customer shall be clearly documented and reported to Staedtler-Logistics as soon as possible after discovery.

3.3 Defect analysis
Defect analysis is carried out by Staedtler-Logistics in cooperation with the customer via telephone, fax or remote maintenance. The customer is obligated to assist and support Staedtler-Logistics by providing comprehensive information on the defect, by replying to all questions from Staedtler-Logistics and by providing permanent, unlimited access to a remote maintenance system. For this purpose, client licenses in sufficient number for the remote maintenance tools in use at the customer location as well as the personnel resources for the administration thereof shall, if necessary, be provided by the customer free of charge for the duration of the contractual period.

3.4 Defect treatment
Defect rectification shall be effected by providing the customer with instructions by telephone or written instructions via electronic data transfer or via data carriers containing the required correction software. In such cases, the customer is obligated to implement the instructions provided insofar as it can be considered reasonable that the customer enables electronic data transfer and imports the correction software immediately upon receipt.

Defect rectification is generally executed via remote maintenance.

3.5 Response Times
The following response times apply at Staedtler-Logistics, from the time of notification:

Category A - 2 hours: program defects that cause a breakdown of core processes.

Category B - 8 hours: all other defects

Response time is calculated during the normal business hours at Staedtler-Logistics, Monday to Friday from 8 a.m. to 5 p.m. excepting public holidays in Nuremberg. Repair services are also rendered exclusively during these hours. Staedtler-Logistics will take the necessary measures to eliminate the defect during the response time. No obligation to complete elimination of the defect during the response time exists. Shorter response times may be agreed upon at an additional charge.

4. Release modification
This service serves to adjust the software configuration disclosed in the Software Servicing Contract to the respective successive releases of the operating system or database approved by Staedtler-Logistics and made available by the customer. If Staedtler-Logistics has released the user software for a certain release of an operating system or database, this release does not automatically apply to the successive operating system or database releases. Staedtler-Logistics will, insofar as it is possible in an economically justifiable manner, adjust the user software to the successive operating system or database releases, so that these may be applied to the modified operating software or database within a reasonable period of time

5. Version modification
Version modification serves to adjust the user software to the respective current environment. Staedtler-Logistics will – insofar as it is economically justifiable – develop and provide successive versions for the standard components of the software configuration, as stated in the Software Servicing Contract, in the event that these are required by modifications and statutory provisions or other applicable regulations for these programs.

Staedtler-Logistics will furthermore – in its sole discretion – implement improvements in the user software regarding software technology and user comfort.

6. Exclusions

6.1 General exclusions
Servicing does not cover the following services:

- Any servicing job that occurs due to improper system administration or improper use, regardless if such improper behavior was performed by the customer, his assistants or any other third party that had not been authorized by Staedtler-Logistics.
- Any servicing job that occurs due to the customer's failure to correctly implement instructions from Staedtler-Logistics concerning application or the correction, or the customer's failure to install new releases or versions directly upon receipt. The burden of proof rests on the customer.
- any servicing job necessary due to an Act of God, due to external hazards or due to the utilization or application of any material or any accessories which is faulty or not in compliance with the specifications of Staedtler-Logistics. The burden of proof that defects are not due to the use of faulty accessories or accessories not in compliance with the specifications of Staedtler-Logistics rests on the customer. Data processing systems, including operating systems, equipment and network components are considered as accessories in the sense of the provisions stated therein.

6.2 Software modifications
In the event that the customer has modified the software or used the product in combination with products for which the software has not been authorized by Staedtler-Logistics, all service obligations in this contract are rendered inapplicable. Staedtler-Logistics' obligations are not rendered inapplicable if the modifications occurred with approval from Staedtler-Logistics or were executed by Staedtler-Logistics. The customer reserves the right to prove that the services from Staedtler-Logistics in this contract were not made more difficult by the modifications.

6.3 Separate assignment
The services and performances stated in paragraph 6 may be assigned separately.

7. Not applicable

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8. Delivery in the context of support services

8.1 Content and Location
Staedtler-Logistics delivers data carriers with the respective programs exclusively to the system administrator and the location that have been named in the Software Servicing Contract. Servicing deliveries usually only include online documentation. Hardcopy documentation shall only be delivered if expressly agreed upon. Software shall only be delivered in executable form (object code), unless otherwise agreed upon.

8.2 License for utilization
The customer is granted a license for utilization of deliveries in the framework of the Software Servicing Contract in correspondence with the customer's license for utilization of the software subject to servicing. In the event that Staedtler-Logistics delivers the source code based on a separate agreement, the customer is granted a license for utilization exclusively for the development of interfaces to other programs and the deletion of program errors in accordance with the requirements and to the extent stipulated in §§ 69 d and e of the German Copyright Law.

8.3 Duty of inspection, notification and rejection
The customer is obligated to implement the new release, the new version or the correction software immediately upon receipt and to test for possible apparent defects and to report detected defects instantly to Staedtler-Logistics.

8.4 Notification of defects
Defects detected by the customer shall be clearly documented and reported in writing promptly after discovery to Staedtler-Logistics.

8.5 Remedy and other rights
Staedtler-Logistics shall remedy defects of new releases or versions in accordance with paragraph 3. In the event that Staedtler-Logistics fails to remedy the defect within the time limit set by the customer or after the first two attempts, the customer is entitled to lower the servicing price appropriately or to extraordinarily terminate the contract. The customer is not obligated to grant a period of grace if this would not be reasonable for the customer. The customer is furthermore entitled to claim compensation instead of service, or reimbursement of expenses incurred in vain.

9. Payment

9.1 Payment of flat rate services according to paragraphs 2 - 5
For the maintenance services from Staedtler-Logistics in accordance with paragraphs 2 – 5, the customer pays the rate agreed upon in the Software Servicing Contract.

Payment is due annually and in advance by January 1. In the event that a servicing agreement does not commence on the first day of the year, the servicing fee is calculated for the remaining months of the calendar year per started month. In this case, payment is still due in advance.

9.2 Not applicable.

9.3 Price adjustments
Staedtler-Logistics is entitled to adjust the prices for software servicing with an advance notice period of three month. An increase in prices of more than ten per cent entitles the customer to terminate the contract in question with an advance notice period of two months.

9.4 Servicing fees for extended utilization
If the customer acquires the right to use the software in a larger range than was stated in the Software Servicing Contract, the servicing fee is increased accordingly. Servicing fees are increased proportionally to the additional payment for the expansion of the license according to the Transfer of Software Contract and the amount defined therein for the former license for utilization.
In the event that a customer exceeds the contractual range of utilization without consent, Staedtler-Logistics is entitled to claim twice the amount which would have been payable in accordance with the price list of Staedtler-Logistics. Further claims by Staedtler-Logistics due to excessive use remain unaffected.

9.5 Expansion of range of software utilization
In the event that the customer acquires further software supplements or modifications at a later time, they shall be automatically incorporated in software servicing upon delivery. The software servicing flat rate will be increased at the beginning of the calendar month following the date of delivery by the respective effective amount for software expansion. The Software Servicing Contract will be adjusted accordingly.

9.6 Additional expenses for on-site services
In exceptional cases, Staedtler-Logistics may render maintenance services directly at the customer's, at Staedtler-Logistics' own discretion. Insofar as such on-site services are carried out with the customer's consent, Staedtler-Logistics shall be entitled to charge the customer with the additional costs and expenses (e.g.: travel time and expenses) in accordance with Staedtler-Logistics' terms and conditions of service and rates. Travel expenses are always calculated from the Staedtler-Logistics location in Nuremberg.

9.7 Late payment
Staedtler-Logistics invoices interest rates of eight percentage points above the base rate for the period of delay.

9.8 Value-added tax
Value-added tax is not included in the prices.

10. Liability
Staedtler-Logistics' liability - no matter for what legal cause outside of warranty - applies exclusively under the following provisions:

10.1 Unlimited Liability
Staedtler-Logistics is fully liable:

10.1.1 in case of intent, gross negligence and gross organizational negligence.

10.1.2 in cases of damage from injury to life, body and health, regardless of gravity of fault.

10.1.3 in cases where Staedtler-Logistics has assumed a guarantee.

10.2 Contract-typical, foreseeable damage
Staedtler-Logistics' liability for damage arising from infringement of essential contractual obligations is limited to contract-typical, foreseeable damage if no case covered by section 10.1 exists.

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10.3 Other cases
In any other case, Staedtler-Logistics' liability is limited to the contractual compensation per claim.

10.4 Liability without fault
by Staedtler-Logistics is excluded.

10.5 Contributory negligence and data backup
In case damage is attributable to negligence displayed by Staedtler-Logistics as well as by the customer, the customer must deduct his contributory negligence.

The customer is particularly responsible for regular, at least daily, data backups. In case of a loss of data for which Staedtler-Logistics is responsible, Staedtler-Logistics can thus only be held liable for covering the costs of the reproduction of data from the backup copies, provided by the customer, as well as the reconstruction of data that would have be lost even despite the creation of regular backup copies.

10.6 Product Liability Law
Liability according to the Product Liability Law remains unaffected.

10.7 Third-party property rights
In case a service rendered by Staedtler-Logistics violates the copyrights or any other property rights of third parties, Staedtler-Logistics indemnifies the customer against any claim or demand arising from property right infringements, provided that the customer immediately informs Staedtler-Logistics about any claims or demands arising from property right infringements and actively includes Staedtler-Logistics in the negotiations with the third party, entrusts Staedtler-Logistics with the negotiations as far as possible and supports Staedtler-Logistics to a reasonable extent.

11. Contract duration

11.1 Start of contract
This servicing agreement will come into effect on the date shown on the contract. If no date is indicated, the agreement will come into effect upon signature.

11.2 Termination of the contract
The service contract may be terminated by either party at the end of a calendar year, first effective at the end of the first full calendar year after signing, with a notice period of three months and notification of the termination in writing. The right of extraordinary cancellation remains unaffected. Staedtler-Logistics reserves itself the right to cancel the contract without notice in the event that the customer does not duly fulfill his duties as stated in the servicing contract, the customer faces financial collapse, facts point at the customer being heavily indebted, the customer suspended payment or an application for composition or a petition for bankruptcy has been filed.
The customer's right of extraordinary termination of the contract is detailed in section 8.5.

12. Confidentiality/Data protection/Loyalty

12.1 Confidentiality clause
The contracting parties are obligated to treat obviously confidential information and files, or those that are marked as confidential, of any other contracting party as company secrets. The customer is in particular obligated to label any information and files as confidential that cannot instantly be identified as confidential if Staedtler-Logistics has received these in a permissible manner from third parties or from publicly accessible sources.

12.2 Company secrets of Staedtler-Logistics
The customer is obligated to protect all programs, codes, documentation and company secrets of Staedtler-Logistics from unauthorized access and unauthorized utilization by third parties.

12.3 Contractual penalty
In every case of a breach of confidentiality and violation of data protection regulations, a contractual penalty to the amount of ten times the servicing fee, in accordance with the Software Servicing Contract, is payable.

12.4 Loyalty
In the event of partner poaching or seeking to poach employees of the other partner by using anticompetitive techniques (§1 German Federal Law on Unfair Competition), a contractual penalty to the amount of 50% of the annual gross income of the employee concerned is payable.

13. Final Provisions

13.1 Transfer of rights and obligations
Any transfer of rights and obligations stipulated in this contract is subject to the consent of Staedtler-Logistics.

13.2 Offsetting
The customer is only entitled to offset undisputed or legally determined claims.

13.3 Applicable law
This contract is subject to German law. UN Sales Law is excluded.

13.4 Place of jurisdiction
Place of jurisdiction is Nuremberg.

13.5 Written form requirement
Modifications and supplements to this contract must be agreed upon in written form. This also applies to this subsection of the contract.

13.6 Ineffective provisions and loopholes
If a provision or a part thereof in this contract is or becomes fully or partially ineffective or invalid, the validity and effectiveness of any other term and condition stipulated therein remains unaffected. This is also valid for loopholes. The ineffective or invalid provision shall be replaced with a new provision which comes as close as possible to the legal and economic content of what the contracting parties would have intended at the conclusion of the contract. Loopholes shall be treated in a similar manner.