

## General Terms and Conditions of Maintenance of GBTEC Software AG

### Table of Content

|                                                                       |    |
|-----------------------------------------------------------------------|----|
| General Terms and Conditions of Maintenance of GBTEC Software AG..... | 1  |
| 1. Conclusion of the Contract   Subject Matter   Remuneration.....    | 1  |
| 2. Definitions.....                                                   | 2  |
| 3. Specifications for Software Maintenance & Support.....             | 2  |
| 4. System Requirements .....                                          | 6  |
| 5. Duties to cooperate and Obligations of the Customer .....          | 7  |
| 6. Remuneration for Maintenance Services/ Term of the Contract.....   | 9  |
| 7. Liability .....                                                    | 11 |
| 8. Confidentiality .....                                              | 12 |
| 9. Final Provisions .....                                             | 12 |

#### **1. Conclusion of the Contract / Subject Matter / Remuneration**

- 1.1 GBTEC AG offers its (potential) customers, among other things, the maintenance of further specified software at corresponding prices in a letter entitled "Offer VKA [...]". At the end, the letter contains a form for placing the order by signing and returning it. By returning this signed form or its own order document (with respect to the services proposed in the letter "Offer VKA [...]") the customer accepts the offer to conclude a contract with GBTEC AG. The order confirmation generated by GBTEC AG and sent to the purchaser by e-mail or return of the countersigned form reflects the content of the contract. The maintenance contract is concluded with the receipt of the order or, at the latest, with the provision of access to the software.
- 1.2 The customer (also referred to as "licensee") has acquired rights of use to software of GBTEC AG. These General Terms and Conditions of Maintenance govern the maintenance relationship between the parties and lay down the

conditions under which the licensee obtains maintenance services from GBTEC AG for the products listed in the maintenance certificate regarding the product version contractually agreed (according to the General Licensing Terms and Conditions as well as § 3.3.1 below), hereinafter referred to as "contractual software" or "software".

- 1.3 The general terms and conditions of the customer are expressly excluded.

## 2. Definitions

**Version:** Means a functional modification of the software.

**Update:** Means the change to a new version.

**Maintenance certificate:** Is a document that lists the software and modules for which the customer has acquired rights of use and for which a maintenance contract has been concluded accordingly. The maintenance certificate is an integral part of the contract and, if necessary, is adapted to each contract amendment.

## 3. Specifications for Software Maintenance and Support

### 3.1 Requirements for receiving Software Maintenance and Support

- 3.1.1 The customer shall indicate two administrators including their respective e-mail addresses to GBTEC AG, via whom the contact with GBTEC AG's support services will take place exclusively. The customer shall only be entitled to receive support services if – prior to the request for support - such administrators have had thorough basic training with regard to the software, have consulted the user documentation as well as participated in webinars pertaining to the respective problem.
- 3.1.2 In case of functional failures, malfunctions, or impairments of the software the customer will therefore first use the available user documentation and videos as well as messages published by GBTEC AG concerning malfunctions and their remedy (to be found at "<https://www.gbtec.com>") and thus try to remedy the problem himself. Should the problem persist, the customer has the option to

report such problem to the support services of GBTEC AG by e-mail to

[bicsupport@gbtec.com](mailto:bicsupport@gbtec.com).

## **3.2 Scope of Maintenance & Support**

GBTEC AG provides maintenance and support services through qualified personnel. The following applies to the scope of such services:

- 3.2.1 The scope of software maintenance respectively support is the delivery of software updates to keep it updated, to prevent malfunctions and to solve known application problems. Where an update is not yet available, GBTEC AG will describe to the customer possible workarounds to avoid malfunctions and application problems.
  - 3.2.1.1 New versions are made available by granting access to download (on-premises operation) or to the provided system (hosting operation).
  - 3.2.1.2 Error handling is carried out by the support services of GBTEC AG. The administrators indicated by the customer have access to the support services exclusively during the following service hours: Working days (Monday through Friday) from 8.00 a.m. to 6.00 p.m. (CET/CEST) with the exception of federal public holidays and holidays in the federal state of North Rhine-Westphalia. These shall be treated as Sundays.
  - 3.2.1.3 Support services shall carry out error processing on the basis of the description of the error reported by the customer. The description of the error by the administrators must contain at least the following information: description of the user interactions that led to the error (reproduction instructions, sample data with which the error occurred, information on the number and types of users with whom the error occurs). Support services will request further information necessary to analyse or reproduce the error on a case-by-case basis.
  - 3.2.1.4 On this basis, support services will check whether the error is already known, whether a software update is available to remedy the error, what triggers the error and how the error can be circumvented.
  - 3.2.1.5 For this purpose, the support services may, at their own discretion and with the consent of the customer, use remote accesses provided by the customer to determine further information for error handling.

3.2.1.6 GBTEC AG will provide the customer with information on available software updates to solve the error as well as the description of possible workarounds to avoid the error in text form.

3.2.1.7 GBTEC AG will eliminate defects of the software notified by the customer within reasonable time and according to the following priority. Defects are divided into three categories of defects by mutual agreement of the parties. Should the parties not reach an agreement on the category at hand, GBTEC AG shall take the final decision, taking into account the legitimate interests of the customer. Depending on the error category or error classes the following differing reaction times apply (reaction times start and run exclusively during the service times stated in this clause):

- a) Error class 1 ("very high"): The use of the software is impossible or is considerably (severely) restricted. This is the case if the following conditions exist simultaneously:
- Functions from a list of core functionalities explicitly defined in the specifications at the time of the order are affected (only if these functions fail or are impaired is the incident or error treated as error class 1) AND
  - no user can use the affected function and no workaround is available AND
  - the incident or defect affects the majority of the data (processes, documents, workflows).

A response time of 4 hours is agreed for defects of error class 1.

- b) Error class 2 ("high"): The use of the software is not impossible but is impaired to a considerable extent. This is the case if the following conditions exist simultaneously:

- not all criteria of error class 1 are fulfilled AND
- the incident or error affects a significant part of the data AND
- an available workaround requires considerable additional effort.

For defects of error class 2, a response time of 8 hours is agreed.

- c) Error class 3 ("low"): all other incidents or defects.  
No reaction time is agreed for defects of error class 3. The error correction shall be carried out through the regular update to a new software version.

3.2.2 GBTEC AG reserves the right to publish the support announcement for the following half-year every six months due to the permanently changing system landscape. Errors in software versions that are no longer supported will be eliminated by way of an update to the latest software version supported by GBTEC AG, if they can only be eliminated by a program change. As far as the licensee has made specific adaptations which are not standard, further adaptations will be necessary during an update which will be charged by GBTEC AG according to expenditure. This also applies to the possibly required additional software, e.g. database system. GBTEC AG explicitly points out to the licensee, who operates the software on-premises, that he is obligated to protect his data by appropriate data backup tapes and to prove this by logs if necessary.

### **3.3 Special Conditions/ Restrictions/ Exclusions**

- 3.3.1 The licensee is entitled to receive maintenance services for previous versions of the software for a maximum of 12 (twelve) months from the date of the general release of the respective new version. After this period, the licensee is obligated to upgrade to the latest version. When the licensee has installed the new version, the previous version will either be destroyed or archived.
- 3.3.2 The maintenance services do not include:
- the provision of new products or the obligation to further develop the software, unless otherwise expressly agreed;
  - the installation and configuration of the software. GBTEC AG will submit a separate offer covering such services upon request;
  - the correction of problems caused by improper use of the service;
  - in case of on-premises operation: the recovery of the customer's data, unless the loss of data concerns the whole or the majority of the customer's data and is caused by GBTEC AG;

- in case of on-premises operation: data recovery, unless the data loss concerns the whole or the majority of the customer's data and is caused by GBTEC AG;
- individual programming services, in particular adaptation to new products and services, a changed hardware and software environment as well as to changed operational procedures of the customer or third party software used by the customer;
- on-site service at the customer's premises;
- training courses;
- Support services regarding the cooperation of the software with third party software used by the customer, which is not the subject of a maintenance contract with GBTEC AG;
- the development of an implementation specific to a customer such as scripts, programs, configurations and the like;
- assistance with technical issues relating to application purposes of the Service.

Services that go beyond those agreed upon in these General Terms and Conditions of Maintenance can be requested and are, if available, to be agreed upon in individual contracts and to be charged according to time and effort. This includes, among others, changes to new versions, which become necessary due to a customer's specific adaptations of the software. If a valid agreement on the hourly rate for comparable services exists between GBTEC AG and the licensee at the time of service provision, this hourly rate shall apply. Otherwise the then current hourly rates of GBTEC AG apply.

- 3.3.3 If GBTEC AG determines that an error reported by the licensee does not actually exist or is not due to a defect of the software of GBTEC AG, GBTEC AG is entitled to charge the time and effort spent on the analysis and other processing according to the applicable hourly rate.

## 4. System Requirements

- 4.1 GBTEC AG publishes the applicable system requirements for each software version and specifies therein recommended or supported system configurations via GBTEC AG's website at <https://www.gbtec.com/terms-conditions/>. By using the support

and maintenance services of GBTEC AG the customer confirms that he has read, understood and accepted the respective applicable system requirements as part of the contract. GBTEC AG owes maintenance and support services only as far as the customer complies with the system requirements.

- 4.2 GBTEC AG is not responsible for the quality or performance of the hardware and/or third party software on the customer's end, that is required according to the relevant applicable system requirements.
- 4.3 If the system configuration used by the customer is no longer recommended or supported by GBTEC AG, **the customer is only entitled to continued comprehensive maintenance services according to these terms and conditions if he changes his system configurations to the ones recommended or supported by GBTEC AG.**

## 5. Duties to cooperate and Obligations of the Customer

- 5.1 Only in case of on-premises operation: The customer is obligated to backup his data before using the software for the first time and at regular intervals. The software stores data processed by the end users on their workstation systems until the end users complete their processing and make the processed data available to other end users via the software. The customer is responsible for backing up such data on the end users' workstation systems.
- 5.2 Only in case of hosting by GBTEC: The customer is responsible for the regular backup of the data that is not stored on the server provided by GBTEC AG, but only at the users' workstation systems ("local"). Unless otherwise agreed in the offer, GBTEC AG backs up the cloud server data daily with a seven (7) day retention period. The backup serves exclusively for the recoverability of the data in case of system failures. GBTEC will always restore the most recent backup available with which an error-free recovery is possible. A restoration of older backups is possible in individual cases against payment of time and material. The software stores data processed by users on their workstation systems until the users complete their processing and make the processed data available to other users via the software. The customer is responsible for backing up such data on the users' workstation systems.

The software transfers data via interfaces to third party systems of the customer. GBTEC is responsible for the backup of such data only as far and as long as such data is processed by the contractual software. The customer is responsible for the backup of the data in the third-party systems.

- 5.3 GBTEC AG will, in case of remote maintenance, connect directly via telecommunication to the EDP system of the licensee in order to remedy the errors immediately. For this purpose, the licensee must provide a remote service possibility which includes a direct access to all computers used by him on which the contractual software is installed. The exact configuration shall be agreed upon with GBTEC AG beforehand. The licensee must ensure that GBTEC AG can access the corresponding systems in such a way that all applications can be started by remote maintenance and, if necessary, system changes can be made for the proper operation of the software. If the licensee is not able to provide such a remote service possibility in time, the on-site appointments made by GBTEC AG will be charged according to expenditure. Regarding the use of third-party software, which has been provided by GBTEC AG upon the customer's request, the contractual provisions of the respective manufacturer apply in this respect. Any and all liability of GBTEC AG for such third-party software is excluded.
- 5.4 The licensee will inform GBTEC AG of all errors in the software immediately after they have been detected.
- 5.5 The licensee will grant reasonable opportunities for error correction (such as allowing workarounds) and assist in the correction of an error as required, including but not limited to providing printed documentation of the problems, additional computer runs to mimic the conditions at the time the error occurred, and access authorization to data files, directories, and control records. In order to be able to correct errors or software misbehaviour reported by the customer, GBTEC AG requires the customer's data records, during the use of which the error or software malfunction occurred, to use such data records e.g. to reconstruct the error, to carry out test runs and to verify the error correction. The customer therefore consents to the use of his data records in this context and by providing such data record implicitly confirms that he is authorised to do so.



## 6. Maintenance Fee / Term of the Contract

- 6.1 The fee for the support and maintenance services ("Maintenance Fee") will be agreed upon individually according to the offer of GBTEC AG and the corresponding order of the customer. The Maintenance Fee is due in advance and for the first time on the 1st of the month following the delivery of the **standard software and independent of any pending customizing or other services by GBTEC** for the remaining calendar year. Thereafter it will be due and invoiced on a yearly basis for each calendar year in advance.
- 6.2 The maintenance period begins at the time of delivery of **the standard software**. The delivery is made by providing
- access to the encrypted download of the **standard software**, i.e. the installation media and instructions according to the current system requirements (on-premises operation), or respectively
  - the access data for the use of the system with the installed **standard software** (hosting operation).
- 6.3 The maintenance agreement shall have a minimum contractual term of twelve months from the delivery of the standard software if the parties have not agreed on a longer minimum contractual term in the offer and order documents. The term shall be automatically extended by 1 year at a time ("Renewal Period") if the maintenance agreement has not been terminated by either party at the end of the minimum contractual term or a Renewal Period observing 3 (three) months' written notice (text form)..
- 6.4 The parties are entitled to terminate the agreement in text form at any time after the fruitless expiry of a reasonable grace period (usually 10 (ten) days), if the other party violates an essential contractual obligation and the violation leads to the fact that the terminating party cannot reasonably be expected to continue to be bound by the contract. GBTEC AG is entitled to such extraordinary termination in particular if - not even after the expiry of a further reasonable grace period - the licensee does not fully comply with his contractual payment obligations.

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- 6.5 Each party is entitled to terminate the agreement at any time in text form if insolvency proceedings have been initiated against the other party or its parent company or have been dismissed for lack of assets.
- 6.6 GBTEC AG will adjust the fees to be paid according to this agreement at its reasonable discretion based on the development of the costs which determine the price calculation. GBTEC shall have the right to increase respectively the obligation to reduce the fees if e.g. the costs for the procurement of hardware or software, energy, the use of data centre services, communication networks or the labour costs increase or decrease or other changes in the economic or legal framework conditions lead to a changed cost situation. Increases in one type of cost may only be used to increase fees to the extent that they are not offset by any decreases in costs in other areas. In case of cost reductions GBTEC AG shall reduce the prices as far as these cost reductions are not completely or partly compensated by increases in other areas. Exercising its reasonable discretion shall include choosing a time for a fee adjustment in such a way that cost reductions are not taken into account according to standards more unfavourable for the customer than cost increases, i.e. cost reductions will have at least the same effect on the fees as cost increases. GBTEC AG will inform the customer about fee adjustments in text form at least six weeks before such adjustment comes into effect.
- 6.7 Unless otherwise stipulated in the order or offer, invoices shall be paid within 30 days of receipt of the invoice.
- 6.8 All prices are quoted in EUR plus the applicable statutory value added tax, unless otherwise indicated in the offer.
- 6.9 All taxes, which are levied in the country of the licensee due to payments made in accordance with this contract, are to be borne by the licensee. If GBTEC AG as the licensor is treated as a tax debtor in the country of the licensee, the licensee must comply with all obligations and formalities on behalf of GBTEC AG. The licensee will immediately send GBTEC AG all payment receipts of the authority concerned.
- 6.10 If the licensee is in default with his contractual payment obligations, GBTEC AG is entitled to charge default interest at the amount of 9 (nine) percentage points per annum above the base rate until payment is received and to suspend the
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performance of the services until payment is received in full. The thus caused postponement of originally agreed upon deadlines does not lead to GBTEC AG's being in default. GBTEC AG is not barred from claiming further damages caused by such delay.

- 6.11 A right of retention as well as a set-off against claims of GBTEC AG is permitted only with respect to undisputed and legally binding claims originating from this same contractual relationship. The assignment of claims of the licensee to third parties is excluded.

## 7. Liability

Claims of the licensee for damages or reimbursement of expenses are precluded, also insofar as they are based on competing claims in tort, with the following exceptions:

- 7.1 GBTEC AG is liable without limitation in the case of injury to life, body, health for which GBTEC AG is responsible as well as in case of intentional or grossly negligent breach of duty.
- 7.2 GBTEC AG is liable for the violation of essential contractual obligations also in the case of slight negligence. In such cases, however, liability is limited to such reasonably foreseeable damage or expense that is typical for the relevant contractual situation.
- 7.3 Liability in the cases of § 7.2 is also limited to the amount of the annual maintenance fee paid by the customer.
- 7.4 Liability for indirect and consequential damages, in particular for damages from business interruptions and for lost profits, is precluded in cases of slightly negligent breach.
- 7.5 Only in the case of on-premises operation: GBTEC AG is only liable for damages resulting from the loss of as well as for expenses for the recovery of data if the licensee has ensured by reasonable precautionary measures, in particular by making daily backup copies of all data, that such data can be reconstructed from machine-readable data material with reasonable effort. Apart from that, the liability for loss of data shall be limited to the typical recovery costs that would

have been incurred if back-up copies had been made regularly and in accordance with the risk, except in cases of intent and gross negligence.

- 7.6 The aforementioned limitations of liability apply accordingly to the personal liability of the employees and agents of GBTEC AG.
- 7.7 The liability for guarantees assumed by GBTEC AG as well as under the provisions of the Produkthaftungsgesetz (German Product Liability Act) remains unaffected.
- 7.8 Irrespective of their legal basis (law of contracts, torts or other), a licensee's claims for damages, who is not a consumer, against GBTEC AG will generally be time-barred after one year from the beginning of the limitation period, otherwise from the time the claim first arose, as far as no shorter legal limitation period is valid. However, the statutory limitation periods apply in case of damage to life, body, health or freedom of a person, in case of intentional or grossly negligent actions of GBTEC AG as well as in case of violation of essential contractual obligations, in case of claims for defects, if GBTEC AG has fraudulently concealed the defects or has given a guarantee for the quality, as well as in case of claims based on the Produkthaftungsgesetz (German Product Liability Act).

## 8. Confidentiality

Each party undertakes to keep the other party's know-how and trade secrets that they become aware of during the performance of this contract and all know-how which is not generally known, secret from third parties - even after termination of the contract - and to obligate their employees accordingly.

## 9. Final Provisions

- 9.1 GBTEC AG reserves the right to unilaterally amend the General Terms and Conditions of Maintenance or the service and product specifications at any time, provided that the amendment is based on factual reasons and is reasonable for the customer or if the amendment is only advantageous for the customer. Justified reasons for amendments to the service and product specifications as well as to these Terms and Conditions may be:

- new legal or official requirements,
- requirements of a court decision addressed to GBTEC AG/group,
- change in availability of technologies required,
- introduction of new, additional services or software, which require a service description in the General Terms and Conditions of Maintenance or in the service and product specifications, unless the previous relationship concerning the maintenance services would thereby be altered adversely,
- necessary changes in order to close existing security gaps,
- adjustments which serve technical progress or are technically and procedurally necessary, unless they have a significant impact on the customer.

9.2 GBTEC AG will inform the customer about the amendments in writing by e-mail at least four (4) weeks before the amendment comes into effect. The amendment requires the consent of the customer. The consent is considered given and the new General Terms and Conditions of Maintenance or the new service and product specifications are included in the contractual relationship, if the customer does not object in text form within four (4) weeks after receipt of the amendment notification. If the customer objects, the previous contractual provisions shall continue to apply to him. It is the licensee's responsibility to prove the objection in case of dispute. In its notification of the amended version GBTEC AG will set the above-mentioned reasonable reaction period and will point out the consequences of a lack of reaction to the customer.

9.3 If the customer objects, each party has the right to terminate the contract in text form within the period of notice applicable for an ordinary termination.

9.4 The laws of the Federal Republic of Germany shall apply. Place of performance and jurisdiction for all disputes arising from and in connection with the maintenance contract is the registered office of GBTEC AG (Bochum, Germany). The same applies if the licensee does not have a general place of jurisdiction in Germany or if his domicile or usual place of residence is not known at the time of the initiation of legal proceedings.

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- 9.5 Any agreement that contains an amendment, supplement or substantiation of the maintenance contract and any special assurance and agreement is effective only if made in text form.
- 9.6 If any provision of the contract is held illegal or unenforceable in a judicial proceeding, such provision shall be severed and shall be inoperative, and the remainder of this contract shall remain operative and binding on the parties. The parties agree that in this case the invalid provision shall be replaced by a valid provision that comes as close as possible to the economic purpose of the invalid provision. The same shall apply to any unintentional contractual gaps.
- 9.7 General terms and conditions of the licensee shall not apply to this contract. They shall also not apply if such terms and conditions have not expressly been objected to.
- 9.8 GBTEC AG may transfer all rights and obligations from this contract to third parties at any time, unless otherwise agreed in text form. The transfer is effective from the time the licensee has received a notification in text form.
- 9.9 GBTEC AG shall have the right to name the licensee as a reference customer in internal and external publications and to use his company logo, unless otherwise agreed upon in text form.

**GBTEC Software AG**