

# CAD Schroer Software Maintenance Terms and Conditions

## I. **Subject**

- 1) CSG provides maintenance services for software products in accordance with the following contractual terms both for CSG's own software products (hereinafter referred to as proprietary CSG software products) as well as for third-party software. These contractual terms do not apply to consumers. With respect to proprietary CSG software products, CSG only provides maintenance services for entire installations.
- 2) The software products to be maintained, the contractual term of the maintenance services, as well as the maintenance fees due, are set out in detail in the Customer's invoice. The maintenance services shall cover the last and penultimate program versions released by the licensor and licensed to the Customer in its updated version (major version and last update of previous major version).
- 3) A software update within the meaning of these terms and conditions is a standard new release of the program developed to correct and/or avoid faults.
- 4) A new software version within the meaning of these terms and conditions is a standard newly developed version of the program that is labelled as such and features better performance and new functions compared to the previous version of the software product.

## II. **Maintenance services provided under these terms and conditions**

CSG will provide the maintenance services as set out below:

- 1) Support in case of malfunctions  
Reproducible problems diagnosed by the respective software manufacturer in the latest software version will be, to the extent possible, eliminated or corrected through a work-around solution. A soft-

ware product is considered to be defective or malfunctioning within the meaning of these terms and conditions if the contractual software product deviates from the applicable functional and performance characteristics set out in the product specifications (see User Manual or Data Sheet) within the scope of the agreed warranty terms in the software license terms. In order for CSG to reproduce the software problem, the Customer shall provide CSG with a brief and clear problem description or example in electronic format (e.g. by e-mail or via the Customer Portal). CSG will pass the example on to the respective development department and inform the Customer on a regular basis about the status of the problem. The Customer can also obtain problem status information via the CSG online Customer Portal.

### 2) Remote Support

If necessary, support in case of malfunctions can also be provided by so-called remote support. In this case it is necessary to conclude a Data Processing Agreement within the meaning of Art. 32 DSGVO.

### 3) Telephone support

CSG will provide advice and instructions to Customer over the phone on how to work around faults in the event of malfunctions.

### 4) Delivery of software updates

(Definition see section I.3) Any Updates for software products listed on the Customer's invoice will be made available to the Customer for use in accordance with the license terms under section V as soon as they have been developed and released.

### 5) Delivery of new software versions

(Definition see I.4) Any New software versions for software products listed on the

- Customer's invoice will be made available to the Customer for use in accordance with the license terms under section V as soon as they have been developed and released.
- 6) Program documentation
- CSG will update and/or adjust the program documentation for the software updates and new versions made available to the Customer, and make the updated program documentation available to the Customer for use in accordance with the license terms under section V. of these terms and conditions.
- 7) CSG Customer Portal
- Maintenance service customers may also register online to use the CSG Customer Portal and the services it offers.
- 8) Virtual Servers/Terminal Servers CSG software products
- The use of CSG software products is generally only permitted within the systems environment for which the products were purchased.
- CSG will grant exclusively to CSG maintenance customers the ability to use a virtual server (including server in the cloud) or a terminal server as a license server for the CSG software. The virtual server or terminal server must only be installed at the site notified to CSG in writing. Customer is allowed to use the CSG software only at this defined site.
- The Customer's right to use CSG software licenses on a virtual server or a terminal server shall expire with the expiry of the Software Support and Maintenance Agreement.
- 9) Moving software to a different computer (node-locked-licenses)
- The software could be provided with a node locked license, meaning that the software can only be used on the individual computer specified in the license file.
- CSG grants Maintenance customers with a node locked license the right to "move" their software once a year during the maintenance period, provided that the software is uninstalled from the computer on which it was previously used.
- 10) Change of License Server (floating licenses)
- Concerning floating licenses CSG grants Maintenance customers the right to change the license server once a year during the maintenance period, provided that the software is uninstalled from the license server on which it was previously used.
- III. *Maintenance services not provided under these terms and conditions***
- 1) Should the Customer request services not provided under this maintenance Terms and conditions, CSG will prepare an appropriate quotation for the Customer.
- 2) Examples of such additional fee-bearing services are:
- a) repair of products damaged by force majeure, such as lightning, fire, earthquake, flooding etc. or by misuse, improper handling and/or operation or accident;
- b) repair of products made necessary by the fact that the Customer or third parties repaired, modified and/or transferred the product without prior written approval of CSG;
- c) repair of products and elimination of malfunctions made necessary by the fact that the products have been operated under conditions and with the help of accessories that do not meet the specifications of the respective manufacturer (e.g. dirt, deviation from permissible ambient conditions and/or improper installation of power

- supply and data lines);
- d) maintenance services in connection with the transfer, installation or removal of products as well as restoration of technical operability made necessary for these reasons;
  - e) maintenance services in connection with interface problems with products not delivered by CSG;
  - f) maintenance services made necessary by the fact that the Customer has failed to meet its obligation to make at least one copy of the software products for backup purposes immediately after delivery;
  - g) maintenance services made necessary as a consequence of improper use or modification of the software by the Customer;
  - h) restoration of customer data after reinstallation or reconfiguration of the Customer's application software.

#### **IV. Obligations of the Customer**

The Customer shall establish the legal, organisational and technical framework for the provision of services by CSG and shall cooperate to the extent necessary. Amongst other things, this means in particular that:

- 1) Any maintenance of software products shall require proof of a valid license for the software to be maintained.
- 2) Conditions meeting the requirements of the system manufacturers must be established and maintained at the installation site. Any computer hardware configurations, e.g. input and output devices, minimum memory capacity, and the capability to download the software necessary to carry out diagnostic and other services, must be provided.
- 3) In the event maintenance is required, the Customer shall grant CSG service personnel access to the products by prior agreement approval. The Customer shall permit, where possible, use of the neces-

sary computer systems free of charge to facilitate the necessary maintenance work. In addition, the Customer shall provide CSG service personnel with sufficient working space, electrical power, storage space for spare parts, documents etc. to the extent required.

- 4) The Customer shall designate a qualified employee (system administrator) who is responsible for the system and is authorized to make and receive solely technical representations to/from CSG concerning the maintenance of contractual products.
- 5) One of the Customer's employees or a person designated by the Customer shall always be present at the product installation site during the maintenance work.
- 6) The Customer shall immediately install and use the latest or previous software update in addition to the latest software version on its computer system or allow this software to be installed. The Customer shall be responsible for, and implement free of charge, all changes or additions to the hardware that may become necessary and adapt as necessary any software products not subject to a maintenance agreement with CSG. Where maintenance services are provided by CSG, any additional costs due to a failure by the Customer to immediately install new software updates and/or new software versions shall be borne by the Customer. At least one copy of each software product shall be made by the Customer for backup purposes immediately after delivery of a software update and/or new software version.
- 7) During the maintenance work, the Customer shall remove all products not delivered by CSG that are not subject to a maintenance agreement with CSG, if CSG believes or suspects such products may have a causal connection to the fault requiring maintenance work.

#### **V. Rights in software updates, new software versions and associated program documentation**

- 1) All software updates, new software versions and associated documentation (hereinafter referred to as "licensed products") licensed to the Customer on the basis of CSG maintenance contracts are protected by industrial property rights of CSG and/or of third-party licensors.
- 2) With respect to software updates and new software versions developed by CSG itself, CSG's licensing terms shall apply.

## **VI. Implementation and conditions of maintenance services**

- 1) Any maintenance work shall and may only be carried out by CSG service personnel or by third parties contracted by CSG for that purpose.
- 2) Reports of malfunctions will only be accepted and maintenance services will only be provided during normal working hours (08:30 to 17:00 Monday to Friday, excluding public and bank holidays).
- 3) The standard response time is 4 working hours. In individual cases it is possible to arrange a shorter response time with CSG. In these cases, the following regulations shall apply:
  - a) The response time shall not commence before CSG has received a correct and comprehensive notice of the malfunction. The response time shall not apply outside the defined and/or agreed maintenance times.
  - b) In the event that an agreed response time is exceeded for reasons within the responsibility of CSG, any claims by the Customer, in particular claims for damages of any kind, shall only apply in case of gross negligence on the part of CSG.

The initiation of the agreed services shall be considered a response by CSG and therefore compliance with the agreed response time.

## **VII. Remuneration and payment terms**

- 1) Maintenance fees are based on the appli-

cable maintenance price list.

- 2) The maintenance fees are calculated according to the terms of payment stated in the invoice and are invoiced in advance. The maintenance fees plus statutory VAT are payable without deduction within 14 days from the date of the invoice unless otherwise agreed.
- 3) In case of unlimited contracts, changes of the maintenance fees are only permissible after expiration of a minimum term of 12 months of the respective maintenance agreement and at most once a year according to the cost development at CSG. It will be communicated to the customer 2 months in advance in writing. Regardless of the actual total cost increase, a fee increase is generally only permissible up to an amount of 5% of the previous fees. If CSG increases the fees by more than 5% in total, the customer is entitled to terminate the maintenance services for the respective product in writing at least 14 days before the end of the minimum term. In this case, the maintenance services for the respective product shall end at the end of the minimum term.
- 4) No payment shall be deemed to have been made until CSG can access the funds. Should the Customer fail to meet the payment terms, the Customer shall pay interest on the respective outstanding balance at a rate of 9% above the base rate in accordance with Sect. 247 BGB. If the Customer's cheques cannot be redeemed, if the Customer discontinues payments, or if CSG becomes aware of circumstances that cast doubt on the Customer's creditworthiness, CSG shall have the right to demand payment of the entire outstanding debt and demand payment in advance, as well as the provision of security.
- 5) The Customer may only set off or withhold payments of maintenance fees if any counter claims have been conclusively upheld by a court of law or are uncontested, unless such counter claims arise from

the same contractual relationship.

### **VIII. Warranty and liability**

- 1) CSG is responsible for properly carrying out the contractual maintenance services in accordance with the relevant statutory provisions. Where CSG's obligation is deemed not to have been met, CSG shall first be granted the opportunity to provide subsequent services to correct any issues within an appropriate time period. A maximum of three attempts at providing such corrective services shall be possible.
- 2) Should CSG fail to meet its maintenance service obligations in relation to significant defects within an appropriate period, the Customer may either terminate the contract after expiry of that period or reduce the maintenance fees for the defective products.
- 3) Any claims for damages by the Customer, for whatever reason, shall be inadmissible, except in cases of wilful intent, gross negligence, injury to life, limb or health, infringement of a guarantee pursuant to Sect. 444 BGB, incapacity or violation of material contractual duties. However, any claims for damages based on a violation of material contractual duties shall be limited to foreseeable damages typical of the contract, unless CSG is liable due to wilful intent, gross negligence, injury to life, limb or health or an infringement of a guarantee pursuant to Sect. 444 BGB. The above provisions do not constitute a change of the burden of proof to the detriment of the Customer.
- 4) CSG shall only be liable for the retrieval of data if the Customer has ensured that this data can be reproduced at a reasonable expense from a Customer backup available in electronic format.

### **IX. Term**

- 1) In the case of fixed-term contracts the Customer is entitled to software maintenance services over a 12-month period by paying the annual maintenance fee, un-

less otherwise agreed. The maintenance services shall commence on the date set out in the Customer's invoice.

- 2) In the case of open-ended contracts the maintenance services shall commence on the date set out in the Customer's invoice. The agreed minimum contract term is indicated in the invoice and amounts to a minimum of 12 months. After expiry of the minimum contract term, the agreement shall automatically be extended by another year unless it is terminated by one of the parties in writing no later than three months prior to expiry. With respect to proprietary CSG products, termination of the maintenance agreement in principle involves the termination of all maintenance services for all licenses listed in the invoice. Any termination of maintenance services for particular individual licenses shall only be possible on condition that the customer can prove that he no longer will use the terminated licenses in future. The proof can be provided by returning all keyfile codes, no matter whether in physical or electronic form, or by providing proof of their destruction.

In the following cases this Maintenance agreement may be terminated in writing at the end of each month without a notice period as set out under section IX.2:

- a) by CSG in the case of a serious violation by the Customer of its material duties under this maintenance agreement, especially in the case of payment default;
- b) by the Customer in the case of CSG and/or a third-party licensor discontinuing further development of the maintained software and/or the licensor no longer supporting a software version.

### **X. Other provisions**

- 1) The Customer may not assign the rights arising from these maintenance terms and conditions without the prior written approval by CSG.
- 2) These Terms and Conditions constitute

the entire agreement between the parties with respect to maintenance services. Any changes and supplements must be made in writing to be effective.

- 3) For proprietary CSG software products CSG's current Software License Agreement (available online at [www.cad-schroer.com](http://www.cad-schroer.com)) shall apply. In all other circumstances, CSG's General Terms and Conditions shall apply.
- 4) This agreement is governed by the laws of the Federal Republic of Germany.
- 5) Should one of the above provisions be or become invalid or unenforceable, this shall not affect the validity of all other provisions.