

General Terms and Conditions for Software Maintenance Services of Ziehm Imaging GmbH

1.0 Scope of Application

1.1 The following General Terms and Conditions for Software Maintenance Services (hereinafter referred to as "GTC for Software Maintenance") apply to all contracts with entrepreneurs in accordance with § 14 BGB (German Civil Code) involving the performance of software maintenance services by Ziehm Imaging GmbH (hereinafter referred to as "Ziehm Imaging") by means of usage rights to the licensed software provided to the customer.

1.2 With respect to the performance of services, the General Terms and Conditions of Ziehm Imaging GmbH for Performing Services apply as a supplement.

1.3 Individual agreements between Ziehm Imaging and the entrepreneur with regard to the performance of software maintenance services take priority over the GTC for Software Maintenance.

1.4 The GTC for Software Maintenance also apply to any future transactions between Ziehm Imaging and the entrepreneur in accordance with § 305, paragraph 3, BGB without requiring explicit prior agreement.

1.5 The version of these GTC for Software Maintenance currently valid at the time of execution of the contract is applicable.

1.6 The GTC for Software Maintenance are exclusively applicable. Any contradicting General Terms and Conditions of the contractual partner or of any third parties are only valid if and as far as expressly agreed to by Ziehm Imaging in writing. Should the entrepreneur not agree with this regulation, the entrepreneur will promptly inform Ziehm Imaging in writing. In this case, Ziehm Imaging reserves the right to withdraw the offer for software maintenance services without giving rise to any claims against Ziehm Imaging. Hereby Ziehm Imaging explicitly contradicts any reference to General Terms and Conditions of the contractual partner or of third parties given by form.

2.0 Definitions

2.1 "**Service**" in the GTC for Software Maintenance includes

- a) Eliminating faults and errors
- b) Service hotline, consulting, and other services
- c) Obligation of the customer to provide information regarding further development and relevant changes to the law

2.2 "**Licensed software**" is a copy of the software, which the customer has purchased from Ziehm Imaging within the scope of providing usage rights to the software.

2.3 "**Updates**" in terms of these GTC for Software Maintenance are software deliveries that eliminate errors in the software and improve the functionality of the software without providing the software with new functions.

2.4 "**Upgrade**" is a copy of the software product that represents a further-developed version of the licensed software with substantial expansions and changes to the characteristic features.

2.5 "**Defect**" in terms of these GTC for Software Maintenance is when the software does not perform the

functions stated in the performance specifications, supplies incorrect results, cuts-out haphazardly, or otherwise cannot be operated in line with the required functions such that use of the software is restricted or adversely affected.

2.6 "**Miscellaneous errors**" in terms of these GTC for Software Maintenance are imperfections in the software that impact its function.

3.0 Scope of Delivery and Performance

3.1 Ziehm Imaging shall exclusively perform software maintenance services on the devices precisely described in the individual contract in accordance with the service level agreed upon therein. The software maintenance services essentially relate only to the updated program version.

3.2 Maintenance comprises maintenance services for maintaining the operational readiness of the software at the customer's premises and for eliminating defects that occur and miscellaneous errors within the scope of what is reasonable without it being possible, however, to prevent every interruption in operational readiness

3.3 Maintenance also includes the documentation belonging to the software as well as the data inventories (files, database material) that are part of the software covered in the contract.

3.4 Ziehm Imaging shall supply the maintenance services for eliminating defects in the software and miscellaneous errors, within the scope of what is reasonable, that occur during use of the software covered in the contract and/or that are disclosed in the corresponding usage documentation, on an on-call basis (**error elimination**). Error elimination includes limiting the cause of the error, error diagnostics, as well as eliminating the error itself; if this is not possible with reasonable effort, the establishment of operational readiness of the software will be provided with a workaround to the error. Elimination of a defect in the software comprises as well the correcting of the corresponding usage documentation. Miscellaneous errors shall be corrected within the scope of maintenance services if this is possible with reasonable effort. The latter is not the case if the error can only be eliminated by reprogramming essential parts of the software program in question. The maintenance services within the scope of eliminating defects and miscellaneous errors include the one-time instructing of the customer's personnel regarding the scope and type of work completed.

3.5 Ziehm Imaging shall provide a hotline service that the customer can use to obtain advice on eliminating malfunctions that the customer can correct on their own by telephone or via e-mail.

3.6 Remote service:

Ziehm Imaging offers a remote service option for some of its devices. The remote service is based on a secure connection between the C-arm and the certified remote service staff member or service center via a web-based cloud solution. Ziehm Imaging utilizes an ISO 27001-certified partner to provide this secure connection via a web-based cloud solution. The customer must ensure that the C-arm has a stable Internet connection for the duration of the remote service sessions. At the clinic, the user activates the remote service function on the device for each session and retains control over how and whether remote service access remains in place throughout. An SSL (Secure Socket Layer) connection ensures secure communication between the C-arm and the service technician. Moreover, the C-arm

technically ensures that no personal data are transferred via the remote service. Access to the remote service platform is only granted to staff trained and authorized by Ziehm Imaging. The remote service system documents all changes made to the device via remote access. Of course, Ziehm Imaging is also under obligation to not make use of the remote access option to obtain access to data in any unauthorized manner. Ziehm Imaging shall put in place suitable measures to keep both the C-arm and the remote service infrastructure malware-free. The customer shall undertake appropriate steps to keep their own network malware-free.

3.7 In addition, Ziehm Imaging shall provide preventative maintenance services for eliminating defects or miscellaneous errors that are made known to the customer in the software covered in the contract, regardless of the use thereof by the customer, by providing patches and/or updates to the customer. Elimination of miscellaneous errors through preventive maintenance services in the form of downloading patches and/or updates requires the consent of the customer.

3.8 Once Ziehm Imaging has received a maintenance request from the customer for the software, Ziehm Imaging shall carry out remote maintenance via telecommunication. If this is not successful, maintenance services shall be conducted by employees and agents of Ziehm Imaging at the installation location. Remote service is done via telephone or via data transfer with e-mail. With the agreement of the customer, maintenance services can also be done by means of remote service, provided the customer has the technical equipment necessary for this. A prerequisite for providing remote service by Ziehm Imaging is the functional readiness of the telecommunication systems of the customer and the IT systems on which the software is installed.

3.9 The response times for eliminating errors are stipulated in the individual contracts. For maintenance services within the scope of eliminating defects and errors, Ziehm Imaging shall start within an appropriate timeframe once they have been made aware of the error. Significant errors endangering use of the software shall be eliminated within the error elimination time agreed-upon in the individual contract for the software in question or shall be remedied with provisional workaround solutions.

3.10 The maintenance services in accordance with 3.6 also comprise installing new software versions and ensuring their operational readiness. This also includes the one-time instructing of the customer's personnel regarding the scope and type of deviations from the preceding software version.

3.11 To perform maintenance work, Ziehm Imaging shall use qualified personnel who are familiar with the software covered in the contract and shall provide tools efficiently designed for maintenance work that correspond to the state-of-the-art such as test programs, test data generator programs, troubleshooting programs, and other diagnostic aids.

3.12 Maintenance services shall be performed on business days from Monday through Thursday between 8 AM and 6 PM and on Friday between 8 AM and 4 PM. Any times beyond those listed shall require a separate agreement.

4. Services not included

4.1 If, during maintenance of software provided to the customer by Ziehm Imaging, defects or miscellaneous errors in this software can be eliminated by transitioning to an

available new version of this software, or adapting to the customer's best interests can be achieved by such a transition, Ziehm Imaging shall only be obligated to carry out the maintenance services or the change services when the customer has just cause for not transitioning to the new software version. This does not apply to the short-term elimination or bypassing of individual errors provided it is necessary to maintain usage of the software until the new software version is installed.

4.2 The following is not included in the maintenance services

- a) Maintenance services outside of the stipulated periods of times stated for maintenance services;
- b) Maintenance services for software not being used under the terms of use specified by Ziehm Imaging;
- c) Maintenance services for software that has been modified by programming work on the part of the customer;
- d) Maintenance services for program parts that are not part of the original version of the software as covered by the contract;
- e) Maintenance services for program parts, the function of which depends on other programs and/or other software unless there is a corresponding maintenance agreement between the customer and Ziehm Imaging for these other programs and/or other software as well;
- f) Change services for adaptations, the implementation of which means that reprogramming of independently usable program modules is necessary and reasonable from a programming perspective;
- g) The training of personnel of the customer goes beyond the scope specified in these GTC for Software Maintenance;
- h) The creation or provision of software or consulting activities regarding this or regarding the use of IT systems.

4.3 Ziehm Imaging can provide additional services at the customer's request to be invoiced separately if Ziehm Imaging has the personnel available for this at the time of the request. A description of services must be agreed on when the request is made. In the event of Item c) and d), the customer must additionally provide extensive documentation of the software changes or the program parts that are not part of the original version. The calculation of the invoicing will be done based on the time required using the hourly rates of Ziehm Imaging that are generally valid at the time of the request. If work must be done at the installation location, travel and accommodation expenses will be invoiced to the customer separately.

5. Customer's duty to cooperate

5.1 When determining, limiting, and reporting errors or miscellaneous defects, the customer shall note the usage documentation belonging to the software and any information from Ziehm Imaging. The customer shall undertake the necessary measures, within the scope of what is reasonable, to determine, limit, and document the errors or the miscellaneous defects. This includes creating a defect report, system logs, and memory excerpts; providing the input and output data in question; and providing intermediate and test results and other documents suitable for illustrating the errors or the miscellaneous defects.

5.2 The customer shall grant the maintenance personnel from Ziehm Imaging access to the devices covered by the contract on which the software covered by the contract is installed, either on-site or via remote data transfer at their discretion. The customer shall also provide and keep functional the technical equipment necessary for completing on-site maintenance work such as power supply, telephone

connections, and data transfer lines and shall provide these items free of charge to a reasonable degree.

5.3 The customer shall name an employee at its installation location as a contact person for the maintenance personnel from Ziehm Imaging.

5.4 Ziehm Imaging shall be released from its obligations to perform the maintenance and change services in the event that the customer does not fulfill its duties to cooperate.

6. Remuneration

6.1 The customer shall pay the fees agreed-upon in the individual contract for the maintenance services at the start of the agreed-upon calculation period, including the extra charges for any agreed-upon special services. Fees and extra charges shall be paid plus the applicable statutory value-added tax. The customer will be invoiced a prorated fee for a maintenance period that is before the start of the first full calculation period together with the fee for the first full calculation period.

6.2 Ziehm Imaging shall cover the travel and accommodation expenses for on-site maintenance services in accordance with 3.0 unless it is determined that the work results provided within the scope of remote service were suitable for eliminating the error or the miscellaneous defects. In the latter case, the travel and accommodation expenses for maintenance personnel shall be paid by the customer.

6.3 This does not include maintenance and/or support services that are necessary due to failure of the customer to adhere to the instructions contained in the user documentation of the software, due to other forms of improper operation, or due to negligible or intentional damage, or a change in the software or a data carrier on which the software is stored. This maintenance work will be calculated according to the time needed on the basis of the hourly rates of Ziehm Imaging generally valid at the time the order is granted, plus the statutory value-added tax.

6.4 This change services will be calculated according to the time needed on the basis of the hourly rates of Ziehm Imaging generally valid at the time the order is granted, in half-hour cycles, plus the statutory value-added tax. Travel and accommodation expenses will be invoiced separately.

6.5 The customer shall additionally provide compensation for any additional services in accordance with 4.3 according to the calculation form indicated therein.

6.6 Invoices from Ziehm Imaging shall be due within two weeks after the invoice date without discount.

6.7 Ziehm Imaging shall be authorized to change the fees and extra charges after written notification while adhering to a notification period of six weeks before the end of the quarter in accordance with general price trends. Any such change, however, shall only be permissible 12 months after execution of the maintenance contract for a particular software at the earliest and must not exceed the fees of the previous 12-month timeframe by more than 10%. In the event that there is an increase in fees or extra charges by more than 5% over the previous 12-month timeframe, the customer shall be entitled to cancel the contract in writing with a prior notification period of three weeks from the time of the increase.

7. Confidentiality and data protection

7.1 During provision of the maintenance services, Ziehm Imaging shall keep confidential all customer information, data, or documents that are indicated as being business or operational secrets or that are clearly recognizable as such based on other circumstances that it gains knowledge of for the duration of the contract and after the contract is over. Ziehm Imaging shall not record, save, duplicate, or use such information, documents, or data in any form whatsoever.

7.2 The obligation to maintain confidentiality in accordance with 7.1 does not apply to those persons who are authorized to have knowledge and who are obliged to observe confidentiality under law or based on the approval of the other respective party or to disclosures that can be demanded by one of the parties due to statutory provisions and/or directives from authorities. Confidential information that is generally known or will be generally known, without this being caused by the disclosing party, is not or will no longer be subject to the obligation to maintain confidentiality. The party citing the presence of one of the aforementioned exceptions has the burden of proof.

7.3 Ziehm Imaging shall instruct its personnel accordingly and require adherence to the confidentiality and data protection agreement in conformance with law.

7.4 Ziehm Imaging shall process personal data only within the scope of maintenance services and according to the instructions of the customer. The customer will remain in charge of the data. The customer is authorized to review the proper processing of data and the security measures undertaken at any time. Ziehm Imaging shall only use reliable and expert employees and/or subcontractors when processing data and shall obligate them when performing their duties regarding data secrecy in accordance with § 5 BDSG (German Federal Data Protection Act) to ensure the security of processed data against unauthorized processing or use and against loss and falsification through technical and organizational measures; to undertake preventative and damage-reducing measures against loss and falsification of data, programs, or technical equipment; to inform the customer regarding malfunctions in processing, security violations, or defects without delay; and to notify the customer without delay in writing regarding complaints and/or recommendations from the Data Protection Regulatory Authority.

8. Rights to work results

8.1 For the maintenance of software that Ziehm Imaging has made available to the customer for use within the scope of a license agreement, Ziehm Imaging shall grant the customer the right to use the work results from the maintenance work covered by the contract as part of this software in accordance with the license agreement under the conditions thereof. Any use beyond this by the customer is hereby excluded. Ziehm Imaging hereby retains all other usage rights, which also includes the right to provide the same work results to third parties.

8.2 The work results of maintenance of software existing exclusively for the customer shall belong to the customer. In this respect, the customer shall have the transferable, exclusive rights to use, edit, and utilize, with said rights being unlimited with respect to time, content, and location, within the scope of all known and unknown usage types, and including the right to grant sub-licenses. The existing rights of third parties shall remain unaffected. Ziehm Imaging shall be free to obtain similar work results for third parties.

8.3 Both contracting parties are entitled to freely dispose of ideas, methods, designs, and others techniques resulting in the implementation of the maintenance covered in the contract and included in the work results in accordance with 8.1. The same thing applies to know-how and experience obtained during implementation of the maintenance work covered by the contract and use of the results thereof.

9. Third-party rights

9.1 For software that Ziehm Imaging has provided to the customer within the scope of a license agreement for use, Ziehm Imaging shall be obligated to ensure that Ziehm Imaging has the right to make edits and changes to the software or to have them made and to use the edited or changed software as well as to authorize others to use it.

9.2 For customer-owned software and for software on which the customer has the right to edit the software or have it modified and to use the edited or modified software, the customer shall grant Ziehm Imaging the right to implement such editing or modification for the customer within the scope of 2.

10. Liability for defects and rights in the case of defects

10.1 The liability for defects and rights in the case of defects for services performed become statute-barred within 18 months. The statute of limitations period starts upon acceptance of the work results. Alternatively, it starts with the commissioning of the software in question if there is no formal acceptance. The liability for defects in this case ends 12 months after delivery of the software in question for services according to a purchase contract. Claims due to intentional acts and/or claims for replacement damages are not subject to a statute of limitations in accordance with 11.3.

10.2 If subsequent performance is not possible within a suitable period, then the customer shall be authorized to cancel the contract in its entirety or in part without prior notification. Should the customer fail to utilize this option, the obligation for fees will be omitted for the software in question. Ziehm Imaging shall subsequently be authorized to cancel the contract with a notification period of one month.

11. Liability lump sums and limitations of liability

11.1 If Ziehm Imaging exceeds the agreed-upon response times by more than 50% when completing maintenance services for reasons caused by Ziehm Imaging, then Ziehm Imaging shall be liable to the customer for each day of delay with 3/10 of the monthly maintenance fee applicable as of the time of the delay, for the software in question. This amount shall not be paid if Ziehm Imaging can prove that there was no error or only a negligible error present that did not impact the functionality of the software or only to a slight extent, or that no damages or only slight damages resulted for the customer.

11.2 Furthermore, Ziehm Imaging shall only be liable, regardless of the legal basis, for damages that were caused by culpable violation of an obligation essential to the

contract, namely an obligation the infringement thereof endangers achieving the purpose of the contract and/or the fulfillment thereof is necessary for even enabling the proper implementation of the contract, and the fulfillment thereof the contracting parties may regularly rely on (cardinal duty). The liability is limited to the damages typical for a contract, the extent to which Ziehm Imaging would have to expect upon entering into the contract based on the circumstances known to Ziehm Imaging at that time.

11.3 The amount of damages in accordance with 11.2 for maintenance services in accordance with 3. is limited to 3 times the fees and extra charges that were to be paid during a contractual year for the software affected by the damage or causing it at the fee and extra charge rates applicable at the time the claim was made. The amount of damages in accordance with 11.2 for additional services according to 4. is limited to 3 times the compensation owed in accordance with 6.4 and/or 6.5.

11.4 For the loss of data and the reproduction thereof, Ziehm Imaging shall only be liable in accordance with 11.2 and 11.3 when such a loss would not have been unavoidable through appropriate data backup measures on the part of the customer.

11.5 The limits of liability in accordance with 11.2 to 11.4 apply appropriately as well to the benefit of the employees and agents of Ziehm Imaging.

11.6 The aforementioned limits of liability do not apply to personal damages or to damages based on intentional acts or gross negligence.

12. Cancellation

12.1. Cancellation is subject to legal provisions and shall always be given in writing.

12.2 Apart from the legal conditions governing cancellation for just cause, the customer shall have just cause to cancel the contract if it can be demonstrated that the device subject to such conditions is permanently no longer in the customer's possession or when it can be shown to have been permanently decommissioned by the customer.

12.3 The above shall not affect the legal conditions governing cancellation.

13. Final Provisions

13.1 The jurisdictional venue for all disputes resulting from or in connection with these GTC for Software Maintenance is Nuremberg, Germany.

13.2 Should any individual clauses of these GTC for Software Maintenance be or become invalid, this shall not affect the validity of the remaining clauses of these GTC for Software Maintenance. The parties shall replace the invalid provisions with a substitute provision that most closely reflects the intended purpose of the invalid provision, while considering the interests of both sides.