



## General Terms and Conditions of S.E.A. Science & Engineering Applications Datentechnik GmbH for the Maintenance of Software ("*Maintenance GTC*")

<b>1</b>	<b>Definitions for the <i>Maintenance GTC</i> (alphabetical order)</b>	1.19	<i>Response time</i> means the period between the receipt of the report of a <i>malfunction</i> by S.E.A. and the establishment of a connection between S.E.A. and the customer, by telephone contact, by <i>remote data transmission</i> or by other means, calculated within the <i>service time</i> .
1.1	<i>Working day</i> means the calendar days from Monday to Friday with the exception of public holidays, customary days and 24.12. and 31.12. applicable in the federal state of North Rhine-Westphalia.	1.20	S.E.A. means S.E.A. Science & Engineering Applications Datentechnik GmbH, Mülheimer Straße 7, 53840 Troisdorf, Germany.
1.2	AV refers to an agreement between the <i>parties</i> on order data processing (Art. 28 GDPR).	1.21	<i>Service time</i> refers to the period during which S.E.A. carries out the <i>maintenance measures</i> and the possibility of <i>downloading</i> . If no other time is agreed, <i>service time</i> is the time from 9 a.m. to 5 p.m. on <i>working days</i> .
1.3	<i>Basic maintenance</i> refers to the basic scope of <i>Maintenance</i> that applies without a special agreement in the <i>Maintenance certificate</i> .	1.22	<i>Software</i> means the computer programs/databases produced by S.E.A. ( <i>basic products/software plug-ins</i> ) named in the <i>Maintenance Certificate</i> , including the documentation named in the <i>Maintenance Certificate</i> , in each case in the standard version without customer-specific adaptations.
1.4	<i>Basic Maintenance Charge</i> means the fixed-sum charge as stated in the <i>Maintenance Certificate</i> for the performance of <i>Basic Maintenance</i> .	1.23	<i>Software plug-in</i> means a <i>software component</i> which extends a <i>basic product</i> by certain features. Subject to special agreement, a <i>software plug-in</i> is technically not capable of running independently and requires the <i>basic product</i> for which it represents an extension in order to run.
1.5	<i>Base product</i> refers to a <i>software product</i> (standard software, not individually produced for a customer) which the user explicitly starts and which is executable as an application.	1.24	<i>Malfunction</i> means a condition in which a computer program as part of the <i>software</i> , when used in accordance with the contract, does not perform a function agreed in the <i>procurement contract</i> and this has a more than insignificant effect on the suitability of the <i>software</i> for the contractually agreed use. Furthermore, <i>malfunction</i> means a condition in which a computer program as part of the <i>software</i> , when used in accordance with the contract, does not perform a function contained in the operating instructions or the otherwise agreed documentation and this has a more than insignificant effect on the suitability of the <i>software</i> for the contractually agreed use.
1.6	<i>Procurement Contract</i> means the contract concluded between S.E.A. and the <i>Customer</i> for the procurement of the <i>Software</i> subject to <i>Maintenance</i> .	1.25	<i>Subcontractor</i> means a third party used by S.E.A. to perform its contractual obligations.
1.7	RDT refers to remote data transmission of <i>software</i> and so-called configurations (standardised pre-setting's for software functionalities), as well as remote data access by S.E.A. to the <i>software</i> for the purpose of <i>maintenance</i> or the processing of <i>faults</i> .	1.26	<i>Ticket System</i> means a technical solution operated by S.E.A. in each case for the acceptance and follow-up of enquiries as well as for the acceptance and follow-up of reports of <i>faults</i> .
1.8	<i>Download</i> means the downloading by the <i>customer</i> of a <i>programme status</i> made available by S.E.A. (if necessary, by e-mail as a download link) from a server of S.E.A. to a computer under the control of the <i>customer</i> .	1.27	<i>Workaround</i> means the handling of a <i>malfunction</i> in such a way that the effects of the <i>malfunction</i> are bypassed or reduced in such a way that the <i>customer</i> can again work with the affected <i>software</i> in regular operation with the essential functionalities.
1.9	<i>Customer</i> means the commercial <i>customer</i> of S.E.A.	1.28	<i>Update</i> means a functional extension and/or technical further development of a computer program, which is part of the <i>software</i> , within the same <i>product generation</i> , initiated by S.E.A.. In the case of a two-digit version designation, an <i>update</i> is usually identified by a change in the numbering after the dot (e. g. change from 1.1 to 1.2, possibly also called minor release).
1.10	<i>Party</i> means S.E.A. or the <i>Client</i> , <i>Parties</i> means S.E.A. and the <i>Client</i> .	1.29	<i>Upgrade</i> means a significant functional enhancement and/or technical development, initiated by S.E.A., of a computer program that is part of the <i>Software</i> , within the same <i>product generation</i> . An <i>upgrade</i> therefore has more than just minor additional functions and/or not just insignificant changes to the architecture. In the case of a two-digit version designation, an <i>upgrade</i> is usually identified by a change in the numbering before the point (e. g. change from 1.4 to 2.0, possibly also called major release).
1.11	<i>Maintenance</i> means the services to be provided under the <i>Maintenance Contract</i> by S.E.A. in accordance with the agreements made, with the exception of <i>further development</i> .	1.30	<i>Contract year</i> means a period of 365 calendar days (in leap years 366 calendar days), beginning with the effective date of the <i>Maintenance contract</i> according to the <i>Maintenance certificate</i> .
1.12	<i>Maintenance GTC</i> refers to these terms and conditions.	1.31	<i>Further development</i> refers to the services of S.E.A. outside the scope of <i>maintenance</i> , which deal with the modification and/or supplementation of existing computer programs and their documentation initiated by a <i>customer</i> in relation to <i>software</i> which as such is subject to <i>maintenance</i> .
1.13	<i>Maintenance Certificate</i> means the document in which the <i>software</i> subject to <i>maintenance</i> is named in detail and conclusively, including the flat-rate remuneration applicable to the <i>maintenance</i> of this <i>software</i> and the otherwise applicable professional conditions or agreements, if applicable with the agreement of optional <i>premium Maintenance</i> services and any other agreements.		
1.14	<i>Maintenance Contract</i> means the contractual agreement consisting of the <i>Maintenance Certificate</i> , the <i>General Terms and Conditions of Maintenance</i> and the <i>General Terms and Conditions of Maintenance</i> , in each case including any further documents referred to in these documents.		
1.15	<i>Price List</i> means the general price list of S.E.A. for deliveries and services or, if agreed therein, the price list pursuant to the <i>Maintenance Certificate</i> .		
1.16	In summary, <i>premium Maintenance</i> refers to the optional services that S.E.A. provides in addition to <i>basic Maintenance</i> according to a separate agreement in the <i>Maintenance voucher</i> .		
1.17	<i>Product generation</i> refers to the <i>programme status</i> of a <i>software</i> for the complete replacement of a <i>basic product</i> . A new <i>product generation</i> is usually characterised by a new product name and the beginning of a new two- or three-digit release count.		
1.18	<i>Programme status</i> means (in the sense of a generic term), in the case of a computer programme that is part of the <i>software</i> , a new <i>update</i> or <i>upgrade</i> or a new <i>product generation</i> and/or any minor programme parts made available (e. g. patches to eliminate a single <i>fault</i> ).		

2	<b>Scope of application, ranking of documents, amendments to the Maintenance GTCs</b>		
2.1	The <i>maintenance GTC</i> apply between <i>S.E.A.</i> and the <i>customer</i> for the <i>maintenance of the software</i> designated in the <i>maintenance certificate</i> and, if separately agreed, the <i>further development of</i> computer programs.		(1) the <i>customer</i> has complied with the obligations to cooperate imposed on him by the contract and necessary for the provision of the services or has provided the materials owed for this purpose; (2) the <i>software</i> is used by the <i>customer</i> in a system environment that meets the system requirements for the <i>software</i> .
2.2	The <i>Maintenance GTC</i> specify the conditions for	3.4	A quality of the services that goes beyond the express promises in the <i>Maintenance contract</i> is not owed.
	(1) the <i>Maintenance services</i> , divided into <i>basic Maintenance</i> and <i>premium Maintenance</i> ,	3.5	The creation or maintenance of the interoperability of the <i>software</i> with hardware and software of the <i>customer</i> or a third party is not an owed quality of the services, unless compatible hardware and software is expressly stated in the <i>maintenance certificate</i> . Any interfaces to third-party software or to software already operated/existing on the customer's premises that may have been individually created for the customer shall not be included in the <i>maintenance</i> , subject to a separate agreement in the <i>maintenance certificate</i> .
	(2) the services for documentation,		
	(3) other services to be provided by <i>S.E.A.</i> by agreement in individual cases.		
2.3	All agreements made between <i>S.E.A.</i> and the <i>client</i> in connection with the <i>Maintenance</i> are conclusively set out in the <i>Maintenance contract</i> .		
2.4	If there are several <i>Maintenance agreements</i> between the <i>parties</i> , they are in principle legally independent of each other.	3.6	Within a <i>product generation</i> , only the last <i>software upgrade</i> provided by <i>S.E.A.</i> is subject to <i>maintenance</i> . Previous <i>upgrades</i> will not be further maintained. Depending on the <i>basic product</i> , a separate fee may be due for the provision of the <i>upgrade</i> ; the <i>customer</i> will be informed of this fee before the <i>upgrade is provided</i> . In addition, there may be expenses due to data migration and, if necessary, adaptation, in particular of <i>further developments</i> . The <i>customer</i> is assured that an <i>upgrade</i> will be <i>maintained for</i> at least 12 (twelve) months after provision.
2.5	Insofar as the services to be provided by <i>S.E.A.</i> to the <i>customer</i> under the <i>maintenance</i> contract constitute commissioned processing within the meaning of Art. 28 DSGVO, the <i>CA</i> shall apply. The <i>CA</i> shall take precedence over all other agreements in data protection matters.		
2.6	These <i>General Terms and Conditions of Maintenance</i> apply exclusively. With the conclusion of a <i>Maintenance contract</i> or any other order for <i>Maintenance services</i> from <i>S.E.A.</i> , the <i>customer</i> accepts these <i>Maintenance GTC</i> in the version that exists at the time of the respective order. Deviating, conflicting or supplementary general terms and conditions of the <i>customer</i> shall only become part of the contract if and insofar as <i>S.E.A.</i> has expressly agreed to their validity. This requirement of consent shall also apply if <i>S.E.A.</i> performs the services without reservation in the knowledge of the <i>customer's</i> general terms and conditions. Individual agreements made with <i>customers</i> in individual cases, e.g. in the <i>Maintenance certificate</i> , take precedence over the <i>Maintenance GTC</i> . A written contract or written confirmation by <i>S.E.A.</i> shall be decisive for the content of such agreements.	3.7	New <i>product generations</i> shall not become the subject of the <i>maintenance contract</i> without a separate agreement. If an existing <i>product generation</i> is replaced by a new <i>product generation</i> , the <i>customer</i> has the option to re-license the new <i>product generation</i> by re-licensing the originally purchased <i>product generation</i> . Depending on the <i>basic product</i> , a separate fee may be due for this. In addition, there may be expenses due to data migration and, if necessary, adaptation, in particular of <i>further developments</i> . The software maintenance conditions depend on the new <i>basic product</i> . There is no obligation on the part of <i>S.E.A.</i> to continue to maintain an earlier <i>product generation</i> . Details result from the associated procurement contract. The <i>customer</i> is assured that each <i>product generation</i> will be <i>maintained for</i> at least 24 (twenty-four) months from the date of provision.
2.7	Any references in these <i>General Terms and Conditions of Maintenance</i> to the applicability of statutory provisions shall only have a clarifying significance. Even without such clarification, the statutory provisions shall therefore apply, unless they are directly amended or expressly excluded in these <i>General Terms and Conditions of Maintenance</i> .		
2.8	<i>S.E.A.</i> reserves the right to make changes to the <i>General Terms and Conditions of Maintenance</i> during an ongoing <i>Maintenance contract</i> . Such amendments shall only become effective if (i) the <i>customer</i> does not object to the amendment within one (1) month after receipt of a written amendment notification and (ii) <i>S.E.A.</i> has informed the <i>customer</i> of the right to object and the deadline in the amendment notification. If the <i>customer</i> objects to the amendment, the current <i>Maintenance GTC</i> shall continue to apply without the amendments. Excluded from this reservation of right to make changes during an ongoing service relationship are those changes which relate to a material contractual obligation of <i>S.E.A.</i> or the <i>customer</i> . In the event of objection by the <i>customer</i> , <i>S.E.A.</i> shall have the right to terminate the <i>Maintenance contract</i> with two months' notice to the end of the calendar month.	4	<b>General description of the scope of services for <i>basic Maintenance</i> and <i>premium Maintenance</i></b>
2.9	Agreements on possible <i>further developments</i> are not part of the <i>maintenance</i> and are made separately, usually by accepting an offer made by <i>S.E.A.</i> .	4.1	Without a separate agreement in the <i>Maintenance certificate</i> and against payment of the agreed <i>basic Maintenance fee</i> , <i>S.E.A.</i> shall provide the following <i>basic Maintenance services</i> (as described in the other parts of these <i>General Terms and Conditions of Maintenance</i> ): (1) Acceptance of reports of <i>malfunctions</i> via e-mails from the <i>customer</i> flowing into a <i>ticket system</i> (without access by the <i>customer</i> to the <i>ticket system</i> itself) and non-individualised processing of <i>malfunctions</i> during <i>service hours</i> in the form of the general provision of <i>programme statuses</i> or <i>workarounds</i> for <i>download</i> , (2) Provision of <i>updates</i> (for <i>download</i> ), if necessary, also for processing <i>faults</i> , (3) Product and application support in the form of a quota of ten tickets in the form of calls per <i>basic product</i> in <i>maintenance</i> (not: <i>software plug-ins</i> or other extensions) per <i>contract year</i> , (4) Adaptation of the <i>software</i> to mandatory legal changes with an appropriate lead time/implementation period in each case and provision of corresponding <i>programme versions</i> for <i>download</i> (only for federal law effective for Germany), (5) Granting access (electronic remote access only) to documentation material, (6) Provision of general information to the <i>customer</i> on the <i>software</i> and its handling for <i>download</i> .
3	<b>General regulations Requirements and scope of Maintenance</b>		
3.1	Computer programs, software or databases other than <i>software</i> expressly named in the applicable <i>maintenance certificate</i> are not the subject of <i>maintenance</i> . In particular, software from manufacturers other than <i>S.E.A.</i> , even if it was provided by <i>S.E.A.</i> via the <i>procurement contract</i> , or software already operated/existing on the <i>customer's</i> premises is not included in the <i>maintenance</i> .		
3.2	Unless otherwise agreed, the services owed by <i>S.E.A.</i> shall be provided in accordance with the proven (i. e. introduced in practice) state of the art applicable at the time of provision.	4.2	In accordance with the respective agreement in the <i>Maintenance certificate</i> and against further remuneration in accordance with the <i>Maintenance certificate</i> , <i>S.E.A.</i> shall provide the following <i>premium Maintenance services</i> in addition to the <i>basic Maintenance</i> (as described in the further parts of these <i>Maintenance GTC</i> ):
3.3	The services are owed by <i>S.E.A.</i> to the <i>customer</i> with the stipulation that		

- (1) Portal access to the *ticket system* for reporting and tracking the processing of *faults*, i. e. retrievability of information from the *ticket system* according to the scope of services provided,
- (2) Call-back service when accepting and processing a ticket,
- (3) Quota of reported *faults* to be processed individually outside the provision of *updates* and *workarounds* according to section 4.1 (1) and (2) in the form of the opening of up to twenty individual tickets per *contract year*,
- (4) Product and application support in the form of a further contingent of ten tickets in the form of calls per *basic product in maintenance* (not: *software plug-ins* or other extensions) per *contract year exceeding* the contingent according to Clause 4.1 (3).
- 4.3 Insofar as reference is made to a ticket in Clause 4.1 or 4.2 for product or application support and for the individual handling of *faults*, the following shall apply: One ticket is consumed with each call and with each respective start of a 15-minute call. Example: A call lasting between 16 and 30 minutes thus consumes two tickets. Two calls of five minutes each also consume two tickets. Tickets not used in a *contract year* expire at the end of the *contract year*.
- 4.4 For the provision of *upgrades* and *product generations*, please refer to Sections 3.6, 3.7 and 6. For further services (in particular *further developments*) and for other services, please refer to Sections 9 and 10.
- 5 Malfunctions**
- 5.1 Malfunction management services, i. e. analysis and processing of *Malfunctions*, are provided for *Malfunctions* which first occur or reoccur, i. e. show effects, after the start of the *Maintenance Contract* and are reported to *S.E.A.* by the *Customer*. This means that *Malfunctions* which had already occurred when the *Maintenance Contract* started are therefore not covered by malfunction management; excluded from this, however, are defects pursuant to the defect's definition in the *Procurement Contract*, insofar as the liability period for defects under the *Procurement Contract* has not yet expired at the time at which the *Maintenance Contract* is concluded.
- 5.2 The *customer* shall report a *malfunction* exclusively via the *ticket system* provided by *S.E.A.* (*basic maintenance*: transmission of an e-mail that is entered into the *ticket system* by *S.E.A.*, *premium maintenance*: direct entry of the ticket by the *customer* via the *ticket system* portal).
- 5.3 Each report of a *malfunction* (malfunction report) must contain as qualified a description of the *malfunction* as possible, which enables a competent employee of *S.E.A.*, if possible without consulting the *customer*, to fully comprehend the description of the problem described; in doing so, the *customer* must provide all information available to him about the problem as well as its effects and possible causes, including the system environment in which the *malfunctioning software* is operated at the time the *malfunction* occurs.
- 5.4 The services of the fault management refer to *software that is technically operated* at the place of use agreed in the *maintenance agreement*, if nothing is agreed there, at the customer's registered office in Germany.
- 5.5 Within the scope of malfunctions management, *S.E.A.* classifies each phenomenon reported by the *customer* as a fault into the following classes, whereby the allocation of a *Malfunction* to a fault class is carried out by *S.E.A.* at its reasonable discretion (§ 315 BGB):
- (1) Class A: A *malfunction* that leads to a complete standstill of the *software* and makes it impossible to continue working on important work processes. The *malfunction* cannot be circumvented by a *workaround*.
- (2) Class B: A *malfunction* that leads to a not only insignificant malfunction of the *software*, but can be circumvented by appropriate measures or working methods.
- (3) Class C: A *malfunction* which only leads to no impairment of work processes and which is circumvented by appropriate measures or working methods.
- (4) Class D: The reported phenomenon is not a *malfunction* in the sense of the *Maintenance GTC*.
- 5.6 A disorder that is to be treated within the framework of *Maintenance* is not present in particular if
- (1) the problem was caused by improper handling of the *software* by the *customer* or by third parties,
- (2) a *malfunction* according to para. 5.1 sentence 2 is present,
- (3) a phenomenon is asserted or a functionality is claimed that lies outside the agreed functional scope of the *software*,
- (4) the cause of a problem does not lie in the *software*, but is caused by other causes that do not lie in the *software*.
- S.E.A.* is not obliged to handle such problems.
- 5.7 The expenditure, in particular for the analysis and processing of a reported problem, which arises on the part of *S.E.A.* due to the fact that the *customer* reports a problem which is not to be processed as a *malfunction* in accordance with the *Maintenance GTC*, but which is to be processed e. g. under item 5.6. 5.6 shall be remunerated by the *customer* in accordance with the *price list* to the extent actually incurred. If it becomes apparent during the analysis that the *customer's* report is highly unlikely to contain a *fault* to be processed under the *General Terms and Conditions for Maintenance*, *S.E.A.* shall inform the *customer* as soon as possible of this circumstance and the costs incurred to date for the analysis.
- 5.8 Within the scope of *Premium Maintenance*, *S.E.A.* is obliged in the event of *faults* to adhere to a *response time* agreed in the *Maintenance Agreement*; if a *response time* has not been agreed, *S.E.A.* shall normally get back to the *customer* within five (5) *working days* of receipt of the notification of the *fault*.
- 5.9 Within the framework of the handling of the fault management, *S.E.A.* shall make use of the *ticket system* in which *S.E.A.* documents in particular the fault report as well as the measures taken by it to handle the fault and which enables the *customer* to take note of the respective current status of the fault management when *Premium Maintenance* is agreed.
- 5.10 *S.E.A.* shall not be obliged to remedy *faults* in the sense of success, subject to the express deviation of from the agreement. An obligation on the part of *S.E.A.* to remedy a *malfunction* to be dealt with within the framework of the malfunction management within a certain period of time in accordance with the analysed malfunction class shall only exist in the case of *premium Maintenance* and a special agreement in the *Maintenance certificate*. A *malfunction* is remedied when the malfunctioned functionality is available again - also by means of a *workaround solution*.
- 5.11 The type and manner of the measures for fault processing are at the reasonable discretion (§ 315 BGB) of *S.E.A.* *S.E.A.* is in particular entitled to use a *workaround solution*. In the case of *basic maintenance*, the processing shall generally be carried out by providing *programme statuses/bypass solutions* for *download*, or by other means if agreed accordingly within the framework of *premium maintenance*. However, even then *S.E.A.* will always carry out the fault processing by *remote data transmission*.
- If *S.E.A.* offers the *customer* a new *programme version* for *downloading* in order to process a *malfunction*, the *customer* must take this over into operation, provided that the takeover is not unreasonable for him, and, insofar as installation instructions have been provided for this purpose, install it in accordance with *S.E.A.*'s installation instructions.
- The processing of a *fault* can also take place in the form of instructions to the *customer*. The *customer* shall comply with such instructions unless compliance is unreasonable for the customer.
- Work at the place of use of the *software* is not owed within the scope of *maintenance*.
- 5.12 If several *disruptions* occur at the same time, *S.E.A.* shall be entitled to prioritise them at its reasonable discretion (§ 315 BGB).
- 5.13 Any use of *S.E.A.* for fault management in excess of an agreed time contingent or contingent of tickets in terms of quantity shall take place within the framework of the respective availability and shall be remunerated according to the respective valid rates of the *price list* on a *time and material basis*.
- 6 Provision of new programme versions (updates/upgrades /product generation)**
- 6.1 *Updates, upgrades* and new *product generations* are made available for *download* via the *S.E.A.* download portals/website or via the

- software update mechanism. If necessary, a download link to a new version can also be sent by e-mail.
- 6.2 The customer is entitled to the provision of updates for S.E.A.'s software subject to maintenance as soon as S.E.A. releases such updates generally for the market. The technical method of provision shall be determined by S.E.A. at its reasonable discretion (§ 315 BGB). The provision of updates is compensated for with the payment of the basic maintenance fee.
- 6.3 The provision of upgrades and new product generations does not take place within the basic maintenance. The extent to which upgrades are provided within Premium Maintenance without separate remuneration shall be determined by S.E.A.'s notification on the occasion of the provision of the upgrade at its reasonable discretion (Section 315 BGB). The more extensive the upgrade, the more likely it is that an additional upgrade fee will be charged (cf. Clause 3.6).
- 6.4 The installation of new programme versions shall be carried out by the customer. Upon request, S.E.A. shall support the customer with the installation and any activities to be carried out in the course of the installation against separate payment of the expenses incurred.
- 6.5 The customer's attention is hereby drawn to the fact that it may be necessary to make adjustments to parts of earlier programme versions which may have been individualised for the customer or to software or computer programmes which are otherwise available to the customer and in operation and which have been created/produced or supplied/delivered by S.E.A. before new programme versions are put into operation. S.E.A. may undertake such adaptations at the customer's request against separate payment of the expenses incurred.
- 6.6 The customer shall be obliged to adopt the latest offered new update/upgrade not associated with an additional fee if (i) this new update/upgrade contains the functionalities of the programme version in use at the customer's premises (ii) the adoption is not unreasonable for the customer. If the customer does not take over the new update/upgrade, the additional expenditure incurred by S.E.A. from the maintenance of such an obsolete update/upgrade shall be remunerated separately.
- 6.7 For the provision of the system environment necessary for new programme versions, i.e. for devices and/or computer programmes not supplied by S.E.A., as well as for any adjustments pursuant to para. 6.5 including the hardware, shall be the responsibility of the customer.
- 6.8 Updates delivered under a Maintenance Agreement and upgrades not subject to an additional fee shall become Software within the meaning of Clause 1.22 upon delivery and shall be subject to the relevant Maintenance Agreement. If the Parties do not enter into a separate agreement, the terms and conditions of the Maintenance Agreement shall not change.
- Whether and under which conditions product generations acquired by the customer become software within the meaning of Clause 1.22 under a maintenance contract shall be agreed by the parties in the procurement contract relating to this product generation.
- 6.9 Within the scope of basic maintenance, S.E.A. is only obliged to adapt the software to changing mandatory legal framework conditions (laws and legal ordinances) with effect for the federal law of the Federal Republic of Germany or the mandatory legal provisions that apply uniformly throughout Germany. This shall be done by making new programme versions available for download. The provision takes place within an appropriate transitional period; whether this always corresponds to the implementation period specified in the law or ordinance procedure depends on the required scope of changes and on the short notice with which the legislator enacts the new or amended standards.
- 7 Support services in the form of Product/application support**
- 7.1 During service hours, S.E.A. provides the option of taking advantage of a brief telephone consultation for product/application support. This service covers the recording, processing and, if necessary, resolution of the enquiry. The support can be reached at the telephone number specified in the Maintenance certificate. The aim of this telephone support is to enable the user to carry out individual applications properly and to solve or circumvent problems himself. However, problem solving is not owed, nor is general instruction or training in the use of the supported products. The consultation can therefore only be used by appropriately qualified employees of the user who are experienced in the use of the supported products and the corresponding system environment.
- 7.2 Any use of the support exceeding the respective agreed quota shall be possible subject to availability and shall be remunerated according to the respective valid rates of the price list. The billing of the utilisation exceeding the contingent shall be made in units of fifteen (15) minutes or part thereof.
- 8 Documentation on programme versions**
- 8.1 When a Program Version is delivered on the basis of the Maintenance Contract or if functionalities in the Software change in the course of processing a Malfunction, the Customer will receive a corresponding supplement/update to the existing user documentation for the Software insofar as changes or supplements have been made that are more than merely insignificant in relation to the previously applicable user documentation.
- 8.2 8.2 S.E.A. may choose whether to provide the supplement/update in paper form or in electronic form.
- 9 Further Services in connection with Maintenance, in particular for Developments**
- 9.1 S.E.A. offers, limited to the capacities available in each case and to be provided exclusively on the basis of a written agreement to be concluded separately by the parties, the services of consulting, preparation of offers, conceptual design, further development, data migration, installation and configuration in connection with the software subject to maintenance as a service outside of maintenance.
- 9.2 In connection with a further development intended by the customer, S.E.A. will, once all the customer's requirements are known, check whether and to what extent the enhancements may also be of interest to other customers of S.E.A. from S.E.A.'s point of view. If this is the case, S.E.A. will offer the further development for inclusion in the standard software if necessary. Further developments which are not to become part of the standard software will be carried out exclusively for an individual customer (individual development) if a corresponding agreement has been made. Further developments that are to be included in the standard will be prioritised within the framework of the available capacities.
- 9.3 The remuneration for the services pursuant to para. Fehler! Verweisquelle konnte nicht gefunden werden. shall be made according to expenditure (time & material).
- 9.4 S.E.A. shall have all rights in relation to the customer, in particular all copyrights, to the computer programs and documentation processed or developed within the scope of further developments. A separate agreement shall be made on the rights granted to the customer in connection with the order. If no agreement has been made, Clause 15 shall apply.
- 9.5 Unless otherwise agreed by the parties, computer programs that are created in the course of further development and become standard software shall become software within the meaning of Clause 1.22 and shall be subject to maintenance as soon as they are transferred to the customer.
- 9.6 S.E.A. draws the customer's attention to the fact that changes/extensions to existing software made within the scope of further developments lead to an increase in the basic maintenance fee, as these increase the maintenance effort. Unless otherwise agreed, the new basic maintenance fee shall amount to ten per cent (10%) of the actual creation effort according to the further development project for the first term year after transfer of the further developed computer program to the customer, and twenty per cent (20%) of the actual creation effort annually for the period thereafter. The actual development costs shall be the real total costs including the possible provision of third-party programs or costs of third parties.
- 10 Other services**
- 10.1 In addition to basic and premium maintenance as well as the further services pursuant to Clause 9, S.E.A. shall provide, limited to the capacities available in each case, the other services for the software within its respective range of services against separate agreement and remuneration according to expenditure. The remuneration for these additional services shall be determined in accordance with the price list valid at the time the service is performed.
- 10.2 Separate benefits in this sense are in particular



12.6	Default of payment If the <i>customer</i> is two (2) calendar weeks in arrears with the payment of an invoice, interest shall be charged on the invoice amount at a rate of eight (8) percentage points above the base interest rate without the need for a reminder or other demand for performance on the part of <i>S.E.A.</i> .	scope of the limitation of liability in accordance with clause 14 shall remain unaffected.
13	<b>Defects of quality and title</b>	13.5 Parallel validity of liability for material defects from the <i>procurement contract</i> and <i>Maintenance services</i>
13.1	Defects of quality in the services of fault management, the hotline, documentation, <i>further development</i> and other services	13.5.1 As long as the agreed defect liability period has not yet expired for <i>software</i> subject to <i>maintenance</i> under a <i>procurement contract</i> , the <i>customer</i> has the choice, in the event of a defect under the <i>procurement contract</i> , between asserting the defect liability rights under the <i>procurement contract</i> and asserting the benefits under the <i>maintenance contract</i> .
13.1.1	The aforementioned services provided by <i>S.E.A.</i> to the <i>customer</i> are services, unless otherwise agreed.	13.5.2 Withdrawal from the <i>procurement contract</i> is excluded as soon as the <i>customer</i> has made use of services from the <i>Maintenance contract</i> .
13.1.2	No service shall be deemed to have been rendered only if, in accordance with a separate written agreement, a successful remedy is owed in respect of a <i>defect</i> or if an acceptance has been expressly agreed for <i>further developments</i> . In this case, the provisions on defects in Clause 13.2 shall apply accordingly.	<b>14 Liability</b>
13.2	Material defects in the provision of new <i>programme versions</i>	14.1 <i>S.E.A.</i> shall be liable to the <i>customer</i> under all contractual and statutory liability grounds (in particular liability for defects, impossibility, delay, poor performance, tort, interference with third party rights) exclusively in accordance with the following provisions, namely
13.2.1	The following defect liability regulations apply to material defects in new <i>programme stands</i> .	(1) in the event of intentional or grossly negligent actions on the part of <i>S.E.A.</i> , its legal representatives/ vicarious <i>agents/subcontractors</i> without limitation,
13.2.2	Insofar as <i>S.E.A.</i> owes supplementary performance, <i>S.E.A.</i> shall be free to decide whether it rectifies the defect or delivers a replacement. If the <i>customer</i> has set <i>S.E.A.</i> a reasonable deadline for subsequent performance after an initial request and <i>S.E.A.</i> refuses to do so or if this fails, the <i>customer</i> shall retain the right, with regard to the rectification of defects, to either terminate the <i>maintenance contract</i> for good cause or to demand a reduction in the remuneration. In the case of a service that does not significantly restrict the functional capability or significantly deviates from it, the <i>customer</i> may only demand a reduction in the remuneration.	(2) in the event of a slightly negligent breach of material contractual obligations by <i>S.E.A.</i> through its legal representatives, vicarious agents or <i>subcontractors</i> to the foreseeable damage typical for the contract,
13.2.3	The liability for material defects shall expire for those services provided by <i>S.E.A.</i> which the <i>customer</i> modifies or in which he intervenes in any other way, unless the <i>customer</i> proves that the intervention is not the cause of the material defect.	(3) in other cases only insofar as the damage is covered by an insurance amount.
13.2.4	<i>The customer shall be entitled</i> to warranty claims for one year from the date of acceptance, delivery or performance of the service. This shall not apply to claims for damages due to injury to life, body or health which are based on a culpable breach of duty by <i>S.E.A.</i> , a vicarious agent or <i>subcontractor</i> . This shall also not apply to claims for other damages based on an intentional or grossly negligent breach of duty by <i>S.E.A.</i> or a <i>subcontractor</i> .	Material contractual obligations are those obligations whose proper performance makes the execution or fulfilment of the contract possible in the first place.
13.2.1	The right to self-execution is excluded.	14.2 Notwithstanding Clause 14.1 (2) and (3), <i>S.E.A.</i> 's liability shall be unlimited in amount.
13.3	Legal defects	(1) in the event of injury to life, limb or health;
13.3.1	If it is legally established that the services of <i>S.E.A.</i> infringe the rights of third parties, <i>S.E.A.</i> shall, at its discretion, either create the necessary right of use for the <i>customer</i> in respect of the infringed rights at its own expense or replace or modify services in such a way that they do not infringe the rights but continue to comply with the contractual agreements.	(2) if <i>S.E.A.</i> has fraudulently concealed a material defect or defect of title, or
13.3.2	Provided that (i) <i>S.E.A.</i> has acted culpably with regard to the infringement, (ii) the <i>customer</i> notifies <i>S.E.A.</i> without delay of the assertion of claims for alleged infringement of third-party rights by the services provided by <i>S.E.A.</i> , (iii) <i>S.E.A.</i> leaves the sole legal defence to <i>S.E.A.</i> and (iv) supports <i>S.E.A.</i> in the defence of such claims. (iii) leaves the sole legal defence to <i>S.E.A.</i> and (iv) assists <i>S.E.A.</i> in defending such claims, <i>S.E.A.</i> shall indemnify the <i>customer</i> against such third-party claims and the associated costs of legal defence against third parties. The limitation of liability pursuant to para. 14 shall apply.	(3) if <i>S.E.A.</i> has given a guarantee in writing (§ 126 para. 1 BGB) for the quality or durability of the services to be provided by it under the <i>Maintenance contract</i> .
13.3.3	The right to self-execution is excluded.	14.3 <i>S.E.A.</i> 's liability under the Product Liability Act shall remain unaffected by the above limitations of liability.
13.3.4	The provision on liability for defects of title is limited to the use of the <i>software</i> in the Federal Republic of Germany; use outside the Federal Republic of Germany is not subject to <i>S.E.A.</i> 's liability for defects of title.	14.4 <i>S.E.A.</i> shall maintain at its own expense a business liability and pecuniary loss insurance policy which is customary in terms of the material scope of cover and, in the view of <i>S.E.A.</i> , appropriate in terms of the amount and scope of the risks arising from the <i>Maintenance contract</i> . Further insurance cover shall be subject to a special agreement between the <i>parties</i> .
13.4	Final regulation The above provisions are conclusive with regard to material defects and defects of title. The right to terminate the contract for good cause in accordance with clause 17.4 and the right to assert claims for compensation for wasted expenditure or claims for damages within the	14.5 Unless acted intentionally, the Product Liability Act applies or there is liability according to section 14.2, claims of the <i>customer</i> shall become statute-barred one year after they have arisen; with regard to the beginning of the limitation period, section 199 para. 1 of the German Civil Code (BGB) shall apply.
		<b>15 Rights of use</b>
		15.1 <i>The customer's</i> rights of use to a <i>programme version</i> provided under the <i>maintenance contract</i> correspond to the rights of use to the <i>programme version</i> of the <i>software</i> under the <i>procurement contract</i> .
		15.2 If and insofar as a <i>procurement contract</i> does not exist or no longer exists or insofar as <i>further developments</i> are created, the <i>customer</i> shall receive simple (non-exclusive), temporally unlimited, spatially unlimited (cf. the restriction in the case of liability for defects of title), transferable rights of use to use the computer programs and the material for its own, internal purposes. The number of users is not limited. Use for or by third parties prior to transfer to them is not permitted. <i>The customer</i> does not have any further rights of use, in particular not the right to process, distribute (sell, lend, rent).
		15.3 With regard to the rights of use, the rights to a new <i>programme version</i> shall take the place of the rights to the previous <i>programme version</i>

- after an appropriate transitional period of one month from the provision for *download*.
- 15.4 The *customer* may archive editions of previous *programme versions*, but may no longer use them productively, in particular by entering or processing further data.
- 15.5 The *customer* may make the necessary full copies of the new *programme version* for backup purposes. The *customer* shall mark these as backup copies and provide them with the copyright notice of the original data carrier. Beyond this, the *customer* is not entitled to copy the *software*.
- 16 Retention of title**
- 16.1 S.E.A. retains ownership and rights to be registered in the services until full payment of the remuneration owed. Prior to this, the rights are always granted provisionally and freely revocable by S.E.A..
- 16.2 If S.E.A. asserts its retention of title, the *customer's* right to use the *software* shall expire. All programme copies made by the *customer* must be deleted.
- 17 Effective date of the Maintenance contract, duration of Maintenance, termination**
- 17.1 The *Maintenance contract* shall become effective with the commissioning and acceptance of the offer/*Maintenance* certificate by the customer and the order confirmation by S.E.A..
- 17.2 The term of *Maintenance* begins when the *Maintenance contract* takes effect, unless a different start and end of term is specified in the offer/*Maintenance* certificate.
- 17.3 Unless otherwise agreed, a *maintenance contract* and all *maintenance certificates* agreed under it shall have a term of one *contract year*, day exactly from the effective date of the *maintenance contract*. If *Maintenance certificates for software* agreed in the *Maintenance contract* are agreed after the *Maintenance contract* has come into effect, the *Maintenance contract* shall also end for these *Maintenance certificates with the expiry of the contractual year*. The termination of the *maintenance contract* shall take place without after-effect and without the need for a declaration by either *party*.
- Tacit extensions of the *Maintenance contract* are possible; in case of doubt, a *Maintenance contract* with the same content is agreed with a term of again one *contract year* from the expiry of the previous *contract year*.
- 17.4 The right to terminate for good cause remains unaffected.
- 17.5 A good cause for termination of the *Maintenance contract for an important reason* on the part of S.E.A. exists if the *customer* is in arrears with the payment of remuneration despite a reasonable grace period being set by S.E.A. in an amount that exceeds 25% of the agreed flat-rate annual fee.
- 18 Subcontractors, assignment of rights by the client**
- 18.1 S.E.A. is entitled to have the services to be rendered by it to the *customer* under the *Maintenance contract* performed by *subcontractors* or to obtain them from *subcontractors*. The fault of a *subcontractor* is equivalent to the fault of S.E.A., § 278 p. 1 BGB.
- 18.2 The *customer* may only transfer the rights and obligations arising from the *maintenance contract* to a third party with the prior written consent of S.E.A..
- 19 Final provisions**
- 19.1 German law shall apply to the *Maintenance contract to the exclusion* of all international supranational (contractual) legal systems, in particular the UN Convention on Contracts for the International Sale of Goods. The prerequisites and effects of the retention of title pursuant to Clause 16 are subject to the law at the respective place of storage of the item, insofar as the choice of law made in favour of German law is inadmissible or ineffective thereafter.
- 19.2 If the *customer* is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law, the exclusive - including international - place of jurisdiction
- for all disputes arising directly or indirectly from this contractual relationship shall be Cologne. This shall not apply if disputes concern claims other than pecuniary claims or if an exclusive place of jurisdiction is established by law for the disputes. S.E.A. shall be free to bring an action at the *customer's* general place of jurisdiction.
- 19.3 Declarations and notifications aimed at establishing or terminating existing agreements which are to be made after conclusion of the contract, with the exception of agreements on *further developments*, must be made in writing to be effective. Substitution of the written form by electronic form (§§ 126 para. 3, 126a, 127 para. 3 BGB) is excluded for these cases. The written form within the meaning of these *General Terms and Conditions of Maintenance* shall also be complied with by a fax signed by the sender's own hand prior to transmission.
- 19.4 The contractual language is German. If copies of these *General Terms and Conditions of Maintenance* or other contractual agreements are made in languages other than German (read versions), only the German version shall be binding.
- 19.5 Should a provision of these *General Terms and Conditions of Maintenance* or another contractual agreement be or become invalid, this shall not affect the validity of the remainder of the agreement.