

## Part I – General regulations

These General Terms and Conditions are included when software is purchased or maintenance contracts (release contracts) are concluded for the software and these General Terms and Conditions are included in the individual contracts.

### § 1 Contract components and special definitions

The contract components are in this order:

- a) The “individual contract” that regulates services, technical requirements, prices, etc.
- b) The appendices of the “individual contract”.
  - i. Appendix SLA: Service Level Agreement
  - ii. SYS: System environment
- c) These Terms and Conditions Sales and maintenance of software
- d) The provisions of the general terms and conditions of the framework agreement including their appendices.

In addition to the definitions of the framework agreement, the following provisions apply:

- e) “Delivery”: is the handover or provision of the software or “releases” to the client. Delivery has taken place when the client has received documents with the necessary information that enable him to download the software.
- f) “Individual software”: is the “software” created or processed for the “client”.
- g) “Release”: is the generic term for “Updates” and “Upgrades”.
- h) “Release contract”: is the contract under which updates or upgrades are delivered to the client.
- i) “SLA”: (Service Level Agreement) are the regulations that regulate the processes in the event of “disruptions” or “technical errors”.
- j) “Standard software”: is the “software” that was not created or processed for the “client”.
- k) “Software”: is used as a common term for “standard software” or specially adapted “custom software” manufactured or supplied by ecos systems.
- l) “Fault”: is the generic term for a malfunction of the “software”, which is qualified as a “defect” or a “technical error”.
- m) “System”: is the client’s technical system on which the “software” or “hardware” is to be operated: The client’s “system” usually consists of hardware, operating system software, firmware, virus scanners, etc.
- n) “System environment ”: are the technical surrounding systems, such as interfaces, operating system, etc., which are required for the proper operation of the “software”. The required “system environment” is described in the respective **SYS appendix**. This can be seen from the respective individual contract. The system environment may change from release to release. This will be announced in the release notes for the releases.
- o) “ Support work ”: is work within the scope of Section II of the applicable framework agreement, through which an attempt is made to eliminate the “technical error” that has occurred or to implement an acceptable workaround.
- p) “Technical Change”: means changes to the “software” or the “system environment”.
- q) “ Updates ”: serve to maintain the functionality of the standard software to the extent agreed in the contract. Updates are delivered as part of the rental or release contract.
- r) “Upgrades”: serve to expand the functions of the standard software.
- s) “ Conclusion of contract ”: is the signing of the respective individual contract by both parties.
- t) “ Version ”: is the release status of the “Software”.

**§ 2 Individual contract**

- 1) The subject matter of the contract is exclusively the services and products specified in the individual contract with the properties, features, intended uses and possible uses specified in the functional description and the "documentation".
- 2) The functionality of the software is guaranteed for the unchanged software in the specified system environment.
- 3) the subject of the contract with express written confirmation from ecos systems if it is documented at least in text form in the individual contract and must be paid for separately in accordance with the agreed price list.

**§ 3 Delivery times, force majeure**

"Delivery" takes place at the times specified in the respective individual contract.

**§ 4 Compensation; The client's rights of retention; On Bill**

- 1) The amount of remuneration depends on the individual contract. All payment modalities such as partial payments, discounts, discounts, etc. are regulated in the individual contract. The same applies to travel costs and expenses.
- 2) All prices are net prices and must be paid plus the applicable VAT.
- 3) ecos systems reserves the right to assert rights of retention against the client in the event of payment arrears from the same contractual relationship of the individual contract . The client will be given a corresponding warning about the availability of the "software" if ecos systems reserves the right to use the "software" and makes it dependent on payment of the outstanding items. Alternatively, in the event of payment arrears, the client can also telephone and/or be notified by post of the blocking of the "software" in the event of non-payment of outstanding items.

**§ 5 Rights of use of the "software"**

- 1) The client receives the number of usage rights to the standard software specified in the individual contract, which entitle him to temporarily or permanently reproduce the software. Additional contractual regulations may apply to the software from third-party manufacturers, which result from the respective EULA (EndUserLicenceAgreement ⇔ terms of use for end users). Rights of use other than those explicitly stated here are not transferred to the client.
- 2) If the client installs new "releases" which replace previous ones provided to him by ecos systems as part of the fulfillment of a release contract, the right to use the replaced releases expires 2 weeks after their "delivery" and installation.
- 3) Parts of the software are based on free and open source modules. The license conditions for these modules and the resulting consequences for the client are available on the ecos systems website.

#### **§ 6 The client's obligations to cooperate and provide information**

- 1) The client's obligations to cooperate arise from the respective individual contract. The obligations to cooperate are main performance obligations that are in synallagm with the performance obligation of ecos systems.
- 2) If the client violates his obligations to cooperate, ecos systems is not obliged to provide the service. In the event of repeated or serious breaches of duty, ecos systems is entitled to terminate the individual contract within a period of one month. The contractual relationship ends at the end of the following month.

#### **§ 7 Functional test**

After completing the installation of the "Software", the parties carry out a functional test. If defects that prevent acceptance still exist after the test, the provisions of Section 7 of the applicable general terms and conditions framework agreement apply with the proviso that the rights mentioned therein to assert reductions in price, compensation for damages or withdrawal may only be asserted after the repair has failed. This does not apply if the "software" is only delivered and installed by the client himself.

#### **§ 8 Warranty for new "software" and "upgrades"**

The following regulations apply to the warranty for "standard software" or upgrades:

- 1) ecos systems is entitled to change defective "software" for the purpose of improvement, provided that the performance characteristics and operation of the "software" do not change for the client and there are no costs associated with the change for the client. This happens in particular through the delivery and installation of new "upgrades". If the client has not concluded a "support contract" with ecos systems, the client must pay for the new installation and configuration of the "releases".
- 2) If ecos systems does not succeed in correcting existing defects within a reasonable period of time, the client is entitled to assert warranty rights. There is no right to declare withdrawal or to claim damages unless the functionality of the "software" is significantly impaired.
- 3) Warranty in the event of a "technical change"
  - a) If the client (or a third party/named in the client's individual contract) makes a "technical change" to which ecos systems has not expressly agreed, it is the client's responsibility to prove that the resulting "malfunction" is a "defect" and not a "technical error". "is to be qualified.
  - b) If there is a "technical error", the client bears the costs of analyzing the fault. The same applies in the event of avoidable incorrect operation.
  - c) If there is a "technical error" and a support SLA has been completed, ecos systems will attempt to eliminate the "technical error". The amount of remuneration can be specified in an individual contract. If no regulation is documented in an individual contract, the remuneration is based on the current price list. The duration of the services must be agreed between the parties.
- 4) Warranty claims for delivered "standard software" and/or upgrades expire twelve months from "delivery". This limitation period does not apply in cases in which an occurring defect has resulted in damage to life, limb or health and/or the defect violates a guarantee promise and/or the defect is caused intentionally or through gross negligence. Claims under the Product Liability Act remain unaffected. Claims arising from the breach of an obligation to make repairs become time-barred from the moment of "delivery".

#### **§ 9 Liability**

Liability is based on Section 9 of the framework agreement,

## Part II – Maintenance or Release Agreement

### § 10 Releases

1) Delivery of “updates”

a) safety instructions

The large number of possible combinations requires uncertainty factors that cannot be assessed in advance, so that proper functioning of the “standard software” delivered to the client as part of this release agreement can only be guaranteed in a contractually agreed or previously tested “system environment”. The current ecos systems instructions [care instructions] regarding the “system environment”, which are named in the **SYS appendix**, must be strictly observed. This appendix is included in the documentation for the individual “releases”.

b) Performance

ecos systems will adapt the maintained programs to changing legal or technical standards within a reasonable period of time and in accordance with the individual contract during the term of the individual contract and, if applicable, during the period of the warranty from this contractual relationship. The maintained programs are also adapted to the versions of the required software environment specified in the **SYS appendix**. Obligations of ecos systems that arise from the fact that ecos systems is legally obliged to provide support services that enable the client to fulfill its obligations under the GDPR are excluded. Such services, as well as all other services that ecos systems must provide to the client in accordance with the GDPR, will be billed at cost. Details can be found in the current price list.

Further adjustments to usage requirements that arise from the client's individual requirements are not part of the service owed under this provision, but must be ordered separately.

ecos systems can determine at its reasonable discretion whether the program-technical services will be provided by delivering new “standard software” or by informing the client's staff about entering program changes or by changing program parameters.

The client can reject the service if it does not have the same compatibility and functionality as the replaced program. The right of rejection also applies if switching to the error-free version offered would entail unreasonable costs for the client, which would result directly from switching to the “standard software”.

c) Performance limits

There is no obligation to deliver “software” that ensures compatibility with any “system environment” available to the client. The same applies if the client wants to change his existing system environment, unless this is clearly necessary for reasons of IT security.

d) process

Only “software” is delivered that ensures compatibility with the “system environment” specified in the individual contract. There are software versions of the system environment that do not appear to be technically sufficiently mature. Therefore, ecos systems will announce at the beginning of a calendar year when it will produce and deliver which releases for the “standard software” to be maintained, which will ensure compatibility with the changed “system environment”. Details are regulated by the respective individual contract.

e) Default

Claims to the delivery of “updates” only exist after ecos systems has sufficiently tested and evaluated its own “standard software”. Claims due to delay can only be asserted with regard to the release plan published by ecos systems for each calendar year, otherwise for separately agreed delivery dates. The software is “delivered” to the client in the manner described in the individual contract.

f) Cost limit

The obligation to deliver new, compatible “standard software” also no longer applies if this involves unreasonable costs

for ecos systems , i.e. if the flat rate agreed in the individual contract is no longer sufficient. The unreasonableness is indicated if the costs required to adapt the program have increased by at least 10% in a period of 24 months from the time of entering into the contract or the time of the last increase in the flat rate and the increased costs are not due to higher profits or other cost savings can be compensated for. In such a case, ecos systems is entitled to the parties entering into discussions about adjusting the remuneration or performance. If such discussions do not take place or do not lead to a consensus within a period of 3 months, ecos systems has the right to terminate the individual contract with a notice period of 6 months.

g) End of life:

Some of the "standard software" supplied by ecos systems as well as the "software" provided by other manufacturers and named in the individual contract have existed for several years. It is not possible to "deliver updates" for any older versions of this "standard software". "Updates" are delivered to the client for a "release status" that was made available to the client 36 months previously. ecos systems will announce the termination of the delivery of "updates" with a notice period of at least 24 months. Deviations from this regulation are possible in individual cases depending on the announcements of the respective manufacturers. Termination can occur in isolation from the other services in the contract.

If, after this period has expired, the client wishes to use "standard software" whose maintenance is no longer offered on the market as standard by ecos systems , the maintenance of this "standard software" is no longer covered by the maintenance fee but must be agreed separately.

2) Delivery of "upgrades"

a) Services

ecos systems provides the client with "upgrades" of the originally delivered "standard software" after they have been released by ecos systems and unless otherwise specified below.

If the operation of the program changes or new functions are added, the operating instructions for the program will also be updated. This is available in the form of online help. In principle, the client has the opportunity to make suggestions for possible further developments. ecos systems will seriously consider the client's suggestions. However, there is no entitlement to the realization/implementation of these suggestions.

b) Benefit limits and services not included

The statements made above under "Performance limits" and "Cost limits" apply.

c) End of life

Some of the "standard software" supplied by ecos systems as well as the "software" provided by other manufacturers and named in the individual contract have existed for several years. It is not possible to "deliver upgrades" for any older versions of this "standard software". Upgrades are delivered to the client for a "release level" that was made available to the client 18 months previously. ecos systems will announce the termination of the delivery of "upgrades" with a notice period of at least 12 months. Deviations from this regulation are possible in individual cases depending on the announcements of the respective manufacturers. Termination can occur in isolation from the other services in the contract.

d) Default

Default occurs if ecos systems does not “deliver” the “standard software” to the client within a period of 6 months after it has been completed and released by ecos systems.

**§ 11 Additional regulation on remuneration**

- 1) The agreed flat rate for the provision of the services mentioned under Section 10 is due in advance in one sum at the beginning of the agreed billing period.
- 2) The obligation to pay begins at the moment when the client can productively use the “standard software” specified in the individual contract, i.e. in the case of the provision of the “standard software” with delivery, in the case of the delivery of adapted “standard software” with its acceptance.
- 3) ecos systems is entitled to a reasonable increase in the agreed flat rate, but not more than 2.5% from the time the contract is entered into, or 12 months from the time of the last increase, provided that the increase in costs is reasonable for the client.

**§ 12 Guarantee for “updates”**

The following regulations apply to guaranteeing “updates”:

- 1) ecos systems is entitled to change defective “updates” for the purpose of improvement, provided that the performance features and operation of the “standard software” do not change for the client and there are no costs associated with the change. This happens in particular through the delivery and installation of new “updates”. If the client has not concluded a “support contract” with ecos systems, the client must pay for the new installation and configuration of the “releases”.
- 2) If ecos systems does not succeed in correcting existing defects within a reasonable period of time, the client is entitled to assert warranty rights. There is no right to declare withdrawal or to claim damages unless the functionality of the “software” is significantly impaired.
- 3) Warranty in the event of a “technical change”
  - d) If the client (or a third party/named in the client's individual contract) makes a “technical change” to which ecos systems has not expressly agreed, it is the client's responsibility to prove that the resulting “malfunction” is a “defect” and not a “technical error”. “is to be qualified.
  - e) If there is a “technical error”, the client bears the costs of analyzing the fault. The same applies in the event of avoidable incorrect operation.
  - f) If there is a “technical error” and a support SLA has been completed, ecos systems will attempt to eliminate the “technical error”. The amount of remuneration can be specified in an individual contract. If no regulation is documented in an individual contract, the remuneration is based on the currently valid price list. The duration of the services must be agreed between the parties.
- 4) Warranty claims for delivered “updates” expire twelve months from “delivery” or completion. This limitation period does not apply in cases in which an occurring defect has resulted in damage to life, limb or health and/or the defect violates a guarantee promise and/or the defect is caused intentionally or through gross negligence. Claims under the Product Liability Act remain unaffected. Claims arising from the breach of an obligation to make improvements become time-barred from the point in time stated in §3 Paragraph 4.

**§ 13 Warranty for “upgrades”**

The warranty for “upgrades” is based on Section 8.

**§ 14 Contract duration, termination**

- 1) The individual contract becomes effective when it is signed. Its term and the options for ordinary termination arise from the respective individual contract.
- 2) The right to extraordinary termination remains unaffected. If the client terminates the contract due to an important reason for which ecos systems is responsible, the maintenance fee already paid will be refunded pro rata.