GENERAL TERMS AND CONDITIONS · PURCHASE MODEL

Maintenance Terms for the Use of Standard Software

for business customers

EVOMECS GmbH, Kanalstraße 6, 80538 Munich, Germany (hereinafter "EVOMECS") provides maintenance services to its contractual partner (hereinafter "Customer") in accordance with these general maintenance terms (hereinafter "EVOMECS Maintenance Terms") for the EVOMECS software products specified in the order form or order confirmation which the Customer has acquired under the purchase model and operates on its own systems (hereinafter collectively "EVOMECS Software").

This English version is a convenience translation. In the event of any discrepancy, the German version shall prevail.

1. Application of the EVOMECS Maintenance Terms

1.1. The EVOMECS Maintenance Terms form an inseparable part of all software maintenance contracts between EVOMECS and its customers. EVOMECS concludes software maintenance contracts exclusively on the basis of these terms.

1.2. Deviating, conflicting or supplementary terms and conditions of the Customer are excluded and shall not apply even if EVOMECS provides maintenance services without reservation in knowledge of the Customer's terms and conditions.

1.3. Individual agreements made with the Customer in individual cases (including collateral agreements, supplements and amendments) shall in any case take precedence over these EVOMECS Maintenance Terms.

1.4. These Maintenance Terms do not apply to the use of the EVOMECS Software as a cloud service. For cloud services, support, incident resolution, updates and upgrades form part of the cloud services and are governed exclusively by the EVOMECS Cloud Terms.

2. Subject Matter of the Contract

2.1. Within the scope of the maintenance contract, EVOMECS provides the following services:

- handling of errors that occur during proper use of the EVOMECS Software or become apparent in the associated program documentation;
- provision of updates or upgrades of the EVOMECS Software supplied;
- general user support (general help requests in the context of regular use).

2.2. The scope of the maintenance services results from Clauses 2, 3 and 4.

2.3. The services described below go beyond the warranty for defects in EVOMECS software products under a software supply contract. The Customer's warranty claims under Clause 9 of the EVOMECS Software License Terms remain unaffected.

2.4. EVOMECS does not owe any further services. In particular, the provision of new products or obligations to further develop the EVOMECS Software are not part of the maintenance services unless expressly agreed otherwise.

3. Maintenance Services

3.1. Updates/upgrades. In accordance with the following provisions, EVOMECS provides the Customer from time to time with certain new versions (updates, minor and major upgrades) of the EVOMECS Software in order to keep it up to date, prevent malfunctions and solve known application problems.

1. Updates within the meaning of this agreement are system updates that fix system errors or improve system security, stability or speed (e.g. "hotfixes"). Updates are installed by EVOMECS via remote maintenance without further notice when available as part of maintenance work taking place anyway. Updates can also be requested independently by the Customer's system from EVOMECS and installed automatically when available (silent updates). In addition, updates may be made available in the EVOMECS customer portal for installation by the Customer itself.
2. Minor upgrades within the meaning of this agreement are improvements or minor extensions of program parts of the software. Minor upgrades are installed by EVOMECS via remote maintenance when available as part of maintenance work taking place anyway. They contain minor functional extensions or changes and are communicated to the Customer in good time in advance. The corresponding documentation is made available to the Customer.
3. Major upgrades within the meaning of this agreement are fundamental system updates, functional extensions or changes. Major upgrades are always coordinated with the Customer in advance. The Customer grants EVOMECS sufficient access to the system for this purpose. Major upgrades are carried out via remote maintenance where possible and on site if necessary. Functional extensions or changes are documented and the documentation is made available to the Customer.
4. Implementation services and training needs of the Customer, i.e. the training of employees, are not covered by this contract and are not included in the agreed remuneration. The parties will agree separately on the commissioning of such services. The EVOMECS IT Services Terms apply to such services.

3.2. During the agreed downtimes, the EVOMECS Software is not or only partially available without the Customer being entitled to any claims as a result. The agreed downtimes include:

1. scheduled downtimes, i.e. downtimes within the agreed regular maintenance windows. The weekly maintenance window for the EVOMECS Software is on Sundays from 10:00 pm to 12:00 midnight (CET/CEST);
2. further maintenance windows for urgently required updates or upgrades, provided the Customer was informed three (3) days in advance;
3. times when the EVOMECS Software is unavailable due to factors beyond EVOMECS's control, e.g. unforeseeable events that could not have been prevented even with reasonable care.

3.3. Error classes. EVOMECS will remedy errors in the software that occur during the term of the maintenance contract in

accordance with the following provisions. Errors identified are to be distinguished according to the following error classes:

1. Error class 1: Malfunction causing a failure of the entire system or essential parts thereof, so that use is completely or almost completely impossible. Operations are impaired to such an extent that immediate remedy is unavoidable.
2. Error class 2: Malfunction that impairs use of the system to such an extent that reasonable work with the system is no longer possible or only possible with disproportionately great effort. The simultaneous occurrence of several material performance defects may result in an error class 1 malfunction.
3. Error class 3: Other malfunction that does not or only insignificantly impairs use of the system. The simultaneous occurrence of several such defects may result in an error class 2 malfunction.

3.4. Master user. For the term of the contract, the Customer appoints a “master user” and a deputy. The master users receive in-depth instruction in the system from EVOMECS and are thus generally enabled to remedy simple errors independently. They are the first internal contact persons for troubleshooting, except for errors of error class 1. Only if the master users cannot remedy the error must it be reported to EVOMECS.

3.5. Response times and measures. The response times listed below apply within the service hours agreed under Clause 5.1 after receipt of a sufficiently specified error report meeting the requirements of Clause 6.3. The response time is the period within which EVOMECS begins taking measures to handle the error. Unless expressly agreed otherwise below, error handling measures are only taken within the agreed service hours (Clause 5.1).

1. Error class 1: In the case of an error of class 1, EVOMECS begins immediately and with all urgency to take measures to at least move the problem to a lower error class and continues the activity with all reasonable effort even outside normal service hours. The error is reported via the EVOMECS service portal and additionally by telephone (see Clause 5). The response time from the error report is max. 5 hours. If it is foreseeable that an error of class 1 cannot be remedied promptly, EVOMECS will provide a workaround. Providing the workaround does not release EVOMECS from its obligation to remedy the error as quickly as possible.
2. Error class 2: For errors of class 2, EVOMECS begins handling the error on the same day if the report is received on a working day by 12:00 noon, or at the beginning of the next working day if reported later, and continues until there is no longer an error of class 2. EVOMECS takes measures to handle class 2 errors only within normal service hours (Clause 5.1). The error is reported by the master user or their deputy via the EVOMECS service portal (see Clause 5). The Customer may request an intensity of error handling as for class 1 errors against payment of surcharges.
3. Error class 3: EVOMECS begins measures to handle class 3 errors as appropriate and within the framework of proper configuration management, sooner or later. EVOMECS takes the measures only within normal service hours. The error is reported by the master user or their deputy via the service portal (see Clause 5).

3.6. The classification of defects into the various categories is made by the Customer at its reasonable discretion, taking into account (i) the impact of the respective performance defect on its business operations and (ii) the interests of EVOMECS.

3.7. Additional services outside maintenance, such as process consulting, training or short-notice error analyses, are invoiced on a time and material basis – even if there is no separate written order or individual offer – provided the service was rendered at the request or with the knowledge of the Customer. Invoicing is based on the daily rates applicable at the time.

4. Support

EVOMECS provides general support to the Customer, i.e. is available to the Customer for general help requests in the context of regular use of the software. Requests can be addressed to EVOMECS via the service portal during normal service hours. Requests are made by the master user. The Customer is provided with up to five additional user accounts for this purpose. EVOMECS will respond to the request within five working days and process it within normal service hours.

5. Service Hours, Contact

5.1. Unless otherwise provided, EVOMECS provides the contractual services on working days (Monday to Friday, excluding nationwide public holidays and public holidays in Bavaria) from 9:00 am to 5:00 pm (CET/CEST).

5.2. The Customer contacts EVOMECS in accordance with the above via:

1. Telephone: +49 89 973 99 974
2. the service portal at the address communicated to the Customer by EVOMECS.

6. Obligations of the Customer to Cooperate

6.1. The Customer ensures that competent staff are available to support EVOMECS.

6.2. The Customer ensures that the EVOMECS Software is only used in a software environment supported by it. The Customer will inform EVOMECS without undue delay of any changes to the operating environment.

6.3. The Customer must report malfunctions of the EVOMECS Software in a detailed and comprehensible form, stating all information useful for identifying and analysing the malfunction. The report includes in particular the effects of the malfunction and the application steps that led to its occurrence.

6.4. The Customer supports EVOMECS free of charge to the extent necessary in the performance of the order by creating all conditions necessary for proper performance within its operational sphere, in particular by ensuring remote access to its system and providing other analysis material. If necessary, the Customer also provides workstations, work equipment (hardware and software, telecommunications equipment, etc.), staff and data free of charge.

6.5. In the event that the EVOMECS Software does not work properly in whole or in part, the Customer is responsible for regularly backing up the data on the drives or servers used by EVOMECS with the care of a prudent businessperson. EVOMECS recommends daily data backups. The backups must be kept in such a way that the Customer can restore the backed-up data at any time.

7. Remuneration

7.1. The annual remuneration for the maintenance services (“Maintenance Fee”) results from the order form or order confirmation. The remuneration is invoiced annually in advance. The Customer pays the maintenance costs without deduction within 14 days of receipt of the invoice.

7.2. If the Customer does not order the maintenance services immediately upon delivery of the EVOMECS Software, it must, in order to be brought up to date in the event of a later start of software maintenance, pay retroactively the Maintenance Fee it would have had to pay if maintenance had been agreed from delivery of the EVOMECS Software. The retroactive payment is due immediately and without deduction. This applies accordingly in the event of termination and subsequent reactivation of software maintenance.

7.3. Services outside the scope of the agreed maintenance services (Clauses 2, 3, 4) are to be remunerated separately by the Customer.

7.4. Adjustment of remuneration. The recurring remuneration agreed in the order form or order confirmation applies for the minimum term agreed therein. The remuneration applicable for a renewal term corresponds to the remuneration of the respective preceding minimum or renewal term, unless EVOMECS increases the remuneration as follows:

1. EVOMECS may change the recurring remuneration at its discretion, subject to the following principles, by giving two months' notice with effect from the beginning of a renewal term by means of a written adjustment notice to the Customer.
2. EVOMECS may change the remuneration at most to the extent that the index specified under no. 3 below has changed (scope of change). In the case of the first adjustment, the scope of change is determined by the index development between the index level published at the time of conclusion of the contract and the index level last published at the time of the adjustment notice. If an adjustment has already taken place, the scope of change is defined by the index development between the index level last published at the time of the preceding adjustment notice and the index level last published at the time of the new adjustment notice.
3. The scope of change is determined on the basis of the index of average gross monthly earnings of full-time employees in Germany in the economic sector "Information technology service activities" (Federal Statistical Office, WZ J 62). Should this index no longer be published, the index published by the Federal Statistical Office that most closely reflects the development of average gross monthly earnings in the aforementioned sector shall be decisive.
4. If the Customer does not terminate the contract at the latest one month before expiry of the preceding contract term with effect from the end of that term (special right of termination), the changed remuneration is deemed agreed for the renewal period in the event of automatic renewal. EVOMECS will point this out in the adjustment notice.

7.5. EVOMECS may demand additional remuneration for its effort if and insofar as

1. EVOMECS takes action on the basis of a report without an error being present,
2. additional effort arises due to improper fulfilment of the Customer's obligations.

7.6. Travel expenses. With regard to travel expenses, Clause 6.5 of the EVOMECS IT Services Terms applies.

8. Term and Termination

8.1. Initial term: The term of the maintenance contract results from the agreements of the parties in the order form or order confirmation. The minimum term agreed therein (initial term) begins

1. upon the simultaneous acquisition of EVOMECS Software, with the provision of the EVOMECS Software,
2. otherwise upon signature by the last party to sign.

8.2. Renewal/termination: The term of the maintenance contract is automatically extended by one (1) year at a time unless the Customer terminates the maintenance contract in writing with three (3) months' notice to the end of the initial term or the respective renewal period. Timely dispatch of the written notice of termination by the Customer is sufficient to meet the deadline.

8.3. Extraordinary termination: The right to extraordinary termination of the maintenance contract remains unaffected. Good cause entitling EVOMECS to terminate exists in particular if the Customer is in default (a) with payments amounting to a not insignificant part of the Maintenance Fee, (b) in the case of monthly billing, with payment of the remuneration or a not insignificant part thereof for two consecutive months and/or (c) in the case of monthly billing, over a period of more than two months, with payments amounting to the remuneration for two months, and does not remedy the default within thirty (30) days of a warning by EVOMECS.

8.4. Notices of termination must be in writing.

8.5. The right to use the EVOMECS Software remains unaffected in the event of termination of the maintenance contract.

9. Applicability of the EVOMECS Software License Terms

9.1. In addition, the EVOMECS Software License Terms in the version valid at the time of conclusion of the contract apply. With regard to the rights of use of updates/upgrades, Clauses 3 and 5 of the EVOMECS Software License Terms apply in particular. With regard to EVOMECS's liability, Clause 11 of the EVOMECS Software License Terms applies in particular.

9.2. Insofar as EVOMECS processes personal data on behalf of the Customer within the scope of the maintenance services, the EVOMECS Data Processing Agreement (DPA) applies.