

Terms of Contract

Software Delivery and Maintenance

I. Applicability of these Terms of Contract

1. Our services, shipments, and offers are based exclusively on these Terms of Contract. These Terms of Contract also apply to all future services, even those not expressly accepted again. Other terms, even those we do not refuse, only apply insofar as they conform with these Terms of Contract.
2. Side agreements must be in writing.

II. Offer and Conclusion of Contract

1. All offers are without obligation.
2. Contracts shall come into effect only upon written confirmation of an order or upon commencement of order performance.
3. Unless stipulated otherwise, prices do not include shipping and value added tax.

III. Software Maintenance

1. We shall carry out the following services for the duration of the software maintenance contract for the therein included software products in their current version:
 - further development of program functions, operation, and interface, insofar as we deem it necessary.
 - release of the newest program version. New versions will also be available by download. You shall bear the download costs.
 - if the newest program version is no longer available in the same language as its previous version, we may fulfill this contract by making available to you the newest program version in German or English.
 - Telephone support (at standard telephone rates) and email support. Support services provided by us are German or English only. We are entitled to assign services to third parties.
2. Program deficiencies shall be rectified by the release of new program versions. A deficiency exists when software features of a program version deviate substantially from the service description. Software packages expanded using interfaces prepared in accordance with our release notice will be maintained exclusive of the up the interface. Software products modified outside the terms stipulated in para. 1 will be excluded from maintenance.
3. Deficiencies can only be rectified if: (a) they are reproducible and arise in the newest program version available; (b) we receive from you all documents and information necessary to rectify the deficiency; (c) you use the newest available program version and documentation and your hardware configuration and system software meets the technical requirements.
4. We are authorized to hire third parties to provide services.
5. If you are late in paying for a delivery or service, we are authorized to withhold or suspend services without being obliged to settle any damage that results.
6. Once the contract begins, it is valid for 24 months. After this period, the contract renews automatically, always for a 12-month period, provided you do not terminate the contract in writing within three months before the end of a contract period. Both sides shall be reserved the right to terminate contract for serious reason. In particular, we have the right to terminate the contract without prior notice when payment is in arrears for more than 2 months or when you do not change your hardware configuration/system software in accordance with the use of a new program version. If an invoice is not paid, it will be given to our collection agency, which will entail significant additional costs for you.

IV. Delivery and Service Period, Assumption of Risk

1. Should delivery dates be exceeded by more than three weeks, you have the right, after the end of an appropriately grace period, to withdraw from the contract. Compensation shall be excluded, unless the delay was caused by willful or gross negligence on our part.
2. Once goods have been transferred to the carrier, at the latest however when they leave our factory, you assume the risk. This also applies to deliveries that do not require freight. The buyer assumes risks for all shipments—including any returns.
3. In the event of wrong orders or return goods, we reserve the right to charge you 5% per post or EUR 75 net, whichever is higher.

V. Terms of Payment

1. Products are shipped collect on delivery or after payment has been made. In special cases, product shipments may be charged. Invoices are payable immediately due net.
2. Payment for the software maintenance contract is charged in advance at the beginning of a given period or date. Payment covers all services under III. If services are used improperly, if mistakes are made in their operations, or if circumstances occur for which we do not bear responsibility, then these services shall not be covered by the payment but will be charged based on time and effort.
3. We are authorized to adjust the yearly maintenance charge. In the event the charge increases more than 5%, you may terminate the software maintenance contract 4 weeks after the notification has been sent.
4. Should you switch to a higher software version during the period of contract, the payment of the maintenance contract will be adjusted accordingly.
5. You may only offset claims with uncontested or legally valid demands.

VI. Retention of Title

1. The product shall remain our property until all demands have been fulfilled. Before that point, you are not entitled to pledge product or assign it as security and a resale is only permitted to resellers in the ordinary course of business under the condition that the reseller retains the title until the product is paid for in full, and at this stage cedes to us the claim to purchase price.

VII. Warranty

1. We will replace at no charge products that have material or manufacture deficiencies for 12 months (for consumers: 24 months) from delivery.
2. We shall not assume additional warranty that products be free of deficiencies. In particular, we do not guarantee that the software meets your needs or purposes or is compatible with other programs and system components you have selected.
3. If you are a merchant, you must notify us of obvious deficiencies within 14 days of receiving the product. If not, we shall assume that you have judged the product to be in conformance. In the event of a justified complaint, we will take back your deficient product and ship you a replacement; we also have the right to subsequent improvement.
4. Should we not fulfill our obligation to send a replacement or if the improvement proves to be deficient after a set grace period, you have the right to take redhibitory action (revocation of contract) or to claim reduction (lowered charges).

5. Further claims are excluded, in particular those demanding compensation.

VIII. Limitation of Liability

Basically we are only liable for damages and/or consequential damages that we, a legal representative or a vicarious agent have willfully caused or brought about through gross negligence. Deviating from this, in the case of negligence we are also liable for damages to life, limb or health, resulting from a breach of duty, for damages that result from a serious default of organization or from a breach of a basic contractual obligation, for damages and/or consequential damages which are foreseeable and typical for this type of contract.

You are obliged to update the software regularly with all updates provided by us within the service-contract. You are also obliged to back up your data regularly, in particular before installation of the software or before making any changes to your hard- or software-environment.

IX. Software Use, Copy Protection

1. With the acquisition of this software, you receive a user's license. You may only make copies of the software for the purposes of safeguarding your data. Reproducing or excerpting handbooks or seminar documents is not allowed without written permission.
2. The use of software for commercial training and education requires our written permission.
3. With the acquisition of a license you recognize the copy protection "dongle" (hardware device for authentication) without reservation and forego all demands that aim to eliminate this copy protection. Every attempt to use a full version of WSCAD without copy protection is illegal.
4. This license is bound with the dongle. If you lose the dongle, the user's license of the software terminates in its entirety. As a rule, we do not replace lost dongles. If the dongle is damaged, we will replace this at your expense if you return it to us complete with chip, storage chip, circuit board, and upper and lower cover plates with seals intact.

X. Right of Revocation

1. You may revoke your declaration to enter into a contract without giving reasons within two weeks, either in text form (e.g., letter, fax, email) or by returning the product. The period commences upon receipt of these directions at the earliest. To observe the revocation period it is sufficient to send off the revocation or dispatch the product in time. The revocation is to be addressed to:
WSCAD electronic GmbH, Kreisstraße 28, 85232 Bergkirchen.
2. In case of a valid revocation, both parties have to return the received goods or payments as well as any derived benefits. If you are fully or partially unable to return the received goods or are only able to return them in a deteriorated condition you must - as the case may be - compensate us for any lost value. This is not applicable for the delivery of physical goods where the deterioration of the product exclusively results from testing the product - such as it would have been possible had you bought the product in a store.
3. You have to bear the return costs if the delivered products correspond to the ordered product and if the price of the product to be returned does not exceed 40 Euro or, in case of a higher price of the product, if you have not made counter-performance or have not yet paid a contractual installment at the time of revocation. In any other case, the return is free of charge for you.
4. Declarations to enter into contract pertaining to software may only be revoked if the data carrier is in its original sealed packaging.
5. Please keep the postal receipt to demonstrate you have sent the product within the period of revocation. Please include enough postage on returns. The product's value (and any postage costs) will be transferred to the bank or credit card account given in your order. In case no bank or credit card account has been given, you will receive a check. If you have not yet transferred the invoice amount, you may disregard the invoice.

XI. Export

1. You are responsible for following all applicable legal requirements up to the end-user.
2. Should your order instruct us not to raise customs duties, you will be liable for any payments subsequently demanded by the customs administration.

XII. Controlling Law and Severability

1. These Terms of Contract and all the legal relations between you and us are governed exclusively by the law of the Federal Republic of Germany.
2. Should any provision in these Terms of Contract or in other agreements become invalid, the remaining provisions shall remain in full force and effect. In the event a provision becomes invalid, the invalid provision shall be replaced by a valid provision that best approximates the purpose of the parties.

XIII. Jurisdiction

1. The place of fulfillment for obligations arising from this contract is 85232 Bergkirchen, Germany.
2. The place of jurisdiction—also for actions filed under the summary proceedings based on bills of exchange, promissory notes and checks—is Dachau or Munich, Germany. However, we reserve the right to institute legal proceedings before courts in your jurisdiction as well.

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