

# Terms and Conditions for Software Delivery, Leasing and Maintenance

## I. Validity of these Terms and Conditions

- Our services, deliveries and offers are directed exclusively at entrepreneurs as defined in § 14 of the German Civil Code (§ 14 BGB) and are based exclusively on these terms and conditions. They thus apply to all future services as well, even if they are not expressly agreed again. Other conditions shall apply, even if we have not objected to them, only insofar as they conform to these terms and conditions.
- Collateral agreements must be in writing.

## II. Offer and Conclusion of Contract

- All offers are subject to confirmation and are non-binding.
- Contracts are entered into only through the written confirmation of an order or with the beginning of the execution of the order.
- Unless explicitly agreed otherwise, prices do not include shipping costs and the legally applicable value added tax.

## III. Software Delivery, Software Maintenance

1. The subject of the software delivery contract expressly excludes the provision of the following interfaces and functions, which require a valid software maintenance contract for use, but can only be part of an individual software maintenance contract, which must be concluded separately:

- Interface to the SIEMENS TIA (Totally Integrated Automation) portal
- Interface to the PLM system PRO.FILE of the company PROCAD
- Interface to PHOENIX Clip Project
- Interface to CadCabel
- Interface to machines from Komax, Steinhauer / nVent, Rittal / Kiesling
- Interface to SolidWorks
- Interface to DeltaT (heat calculation) from ELMEKO
- Import and modification of data from wscaduniverse.com
- Insertion of PLC elements
- Project export for the Augmented Reality App

2. We shall provide, for the duration of the software maintenance agreement, the following services for the latest respective versions of the software products covered under this agreement:

- Further and ongoing development of program functions, program execution and program presentation, insofar as this is deemed necessary in our opinion.
- Provision of monitoring data and the latest version of the program. These may also be offered for download. The download costs shall be borne by you.
- If the new version of the program is not available in the language of your previous version, we shall be entitled to also fulfill our obligations by making the new version of the program available to you in German or English instead.
- Phone support (at the normal telephone rates) - or email support. Support services are provided by us in German or English only. We shall be entitled to provide our services through third parties.

3. The correction of defects shall occur upon delivery of a new program version. If the characteristics of the software in the latest version of the program should deviate substantially from the specifications, a defect shall be deemed to be present.

For software packages extended through interfaces intended for this purpose in accordance with our release notes, the maintenance shall apply up to each respective interface. For software products that have been modified beyond the scope referred to in Section 1, the maintenance is excluded.

4. Defects can be eliminated only if (a) they are reproducible and occur in the latest respective program version provided to you; (b) we receive all the documents and information needed for the removal of defects from you; (c) you are running and using the latest program version and program documentation offered, and your hardware configuration and/or system software are technically up-to-date and correspond to the current state of technology.

5. We shall be entitled to commission third parties with the provision of contractual services.

6. If you are in arrears with the payment of a previous delivery or service, we shall be entitled to withhold or discontinue services without any obligation to compensate you for any resulting damages.

7. 6. The minimum contract period is 24 months from the start of the contract. It shall be extended automatically thereafter for additional periods of 12 months, provided neither Party cancels the agreement in writing with an advance notice period of 3 months prior to expiration. The right to termination for good cause remains unaffected for both parties. In particular, we reserve the right to terminate the agreement without notice if payments are overdue by more than two months or if you do not make the adaptations to your hardware configuration and/or system software that may be required due to the introduction of a new program version. In the event of a failure to pay our invoice, your account will be handed over to our collection agency. Please be aware that this will result in significant additional costs for you.

## IV. Software Lease

1. To the extent that we offer you certain services (e.g., specific software products) on the basis of a software lease agreement, the terms of the present agreement (especially Section III) shall apply accordingly, unless regulated otherwise in Section IV of this agreement. This applies, in particular, to the leasing of interfaces (e.g., the WSCAD Automation Interface) to extend the WSCAD basic software (e.g., the WSCAD Suite) with additional functions (hereinafter referred to as "modules").

2. The minimum contract period is 24 months from the start of the software lease agreement. It shall be extended automatically thereafter for additional periods of 12 months, provided neither Party cancels the software lease agreement in writing with an advance notice period of 3 months prior to expiration. The right to termination for good cause remains unaffected for both parties. In particular, we reserve the right to terminate the agreement without notice if payments are overdue by more than two months or if you do not make the adaptations to your hardware configuration and/or system software that may be required due to the introduction of a new version. A withdrawal from the software lease agreement is not possible.

3. The software lease fee must be paid in advance on the 20th of each respective prior month for the calendar month that follows. The software lease fee for the first month must be paid at the start of the agreement. For those who wish to participate in the direct debit scheme, we will debit the software lease fee from your account. To do this, you will need to give us a SEPA mandate. This shall cover all services according to IV. Any further services required due to improper handling, errors in operation or other circumstances beyond our control shall not be deemed covered by this compensation, but shall be charged additionally based on time and effort.

4. The uninterrupted payment of the software lease fee until the respective time of utilization is a prerequisite for using the services under this Section IV. In the event of non-payment or a late payment of the software lease fees (e.g., the reversal of a SEPA

direct debit), we will hand over the claims in question (including any costs, such as fees for chargebacks) to our collection agency. Please be aware that this will result in significant additional costs for you. If you are in arrears with the payment, we shall be additionally entitled to withhold or discontinue services without any obligation to compensate you for any resulting damages.

5. If you switch to a higher level of any service under this Section IV during the term of the agreement, the remuneration for the software lease shall be adjusted accordingly.

6. Charges may only be offset against undisputed or legally valid claims.

7. Leased services (especially modules) can and may only be used during the term of an existing software lease agreement. We grant you, to the extent that this is paid for, the non-exclusive and temporary right to use the respective leased services in the current version for the duration of the software lease agreement. All rights of use not expressly granted remain with the copyright owner. If you have installed any leased services (especially modules) locally on your system, you will need to delete them without leaving any residue upon termination of the software lease agreement. If you are using these services (especially modules) online on our server, we will block your access to these services upon termination of the software lease agreement. Upon a corresponding request on our part, you shall be obliged to return to us any objects (such as disks, dongles, etc.) that were ceded to you as part of the software lease agreement.

8. In order to use modules, a valid license of the WSCAD basic software with a current software maintenance contract is always required. Upon completion of the software maintenance agreement for the WSCAD basic software, any software lease agreements for the associated modules shall also terminate automatically.

9. For services under this Section IV, we explicitly disclaim strict liability on our part for initial defects. Otherwise, we will keep these services in working order, maintain them and provide you with appropriate service packs and updates to download during the term of the agreement. We are responsible for ensuring that the services under this Section IV exhibit the features specified in the product description during the term of the agreement. We agree to investigate any problems of the software reported by you and to provide you with instructions to eliminate these problems where possible. For substantive errors of the software, we agree to eliminate the error in one of the following new program releases, insofar as a remedy is possible under the rules in Section III. Debugging and troubleshooting requires your participation to a reasonable extent, as and when requested by us. The elimination of faults and damage caused by improper handling on your part, actions of third parties or force majeure is not included in the services covered by the software lease agreement. No further warranty against defects can be offered beyond this time period. In particular, we do not guarantee that the software will meet your requirements and purposes or that it will work together with any other programs and system components you have selected.

10. As part of the product development, we may provide you with new features as part of the leased services. You shall, however, not be entitled to any claim for specific extensions or additions to the services under this Section IV.

## V. Delivery and Performance Period, Transfer of Risk

1. If agreed delivery dates are exceeded by more than three weeks, you shall be entitled, for purchased goods, to withdraw from the agreement after a reasonable extension period. Compensation for damages is excluded, unless we have caused the delay intentionally or through gross negligence.

2. The passing of risk occurs when the goods are handed over to the forwarding agent or freight carrier, but no later than the time they leave the warehouse or factory. This applies even if freight-free delivery has been agreed. All shipments in transit - including any returns - travel at the risk of the purchaser.

3. In the case of an incorrect order or if you return the goods, we reserve the right to invoice you for a cost-sharing contribution in the amount of 5% per item or at least EUR 75 net.

## VI. Terms of Payment

1. Deliveries are made against cash on delivery or upon prepayment. In special cases, deliveries may be made upon invoice. All invoices are payable immediately without deduction.

2. The charges for the software maintenance contract shall be invoiced and be due in advance at the beginning of the specified period or on the specified date. This shall cover all services according to III. Any further services required due to improper handling, errors in operation or other circumstances beyond our control shall not be deemed covered by this compensation, but shall be charged additionally based on time and effort.

3. We shall be entitled to adjust the amount of the annual maintenance charges. In the event of an increase of more than 5%, you may terminate the software maintenance agreement within 4 weeks after notifying us in writing.

4. Should you switch to a higher expansion level during the term of the agreement, the charges for the maintenance contract shall be adjusted accordingly.

5. Charges may only be offset against undisputed or legally valid claims.

## VII. Retention of Title

1. The purchased goods shall remain our property until the fulfillment of all our claims. Until then, the goods may not be pledged or assigned under a security agreement, and a resale is permitted only by resellers in the ordinary course of business on condition that the reseller, in turn, sells the goods subject to retention of title and already assigns the claim to the purchase price to us.

2. You shall be entitled to collect the assigned purchase price claims within the normal course of business. The collection authorization may be revoked at any time if you do not properly meet your payment obligations.

## VIII. Warranty

1. For material and manufacturing defects related to purchased goods, we shall provide a free replacement for up to 12 months from the date of delivery.

2. No further warranty against defects can be offered beyond this time period. In particular, we do not guarantee that the software will meet your requirements and purposes or that it will work together with any other programs and system components you have selected.

3. You shall be obliged to notify us in writing about obvious defects in the purchased goods without delay, and no later than within 14 days after receipt of the goods. Otherwise, the goods shall be deemed approved. In the case of a justified complaint, we will take back the defective purchased goods and deliver a replacement instead. Alternatively, we shall also be entitled to remedy the defects.

4. If we fail to comply with our obligation to deliver a replacement or if the remedial action taken fails even after a set grace period, you shall be entitled, for purchased goods, to withdraw from the contract or to claim a reduction in the price (lowered charges).

## IX. Liability

For damages resulting from injury to life, limb or health, we shall be liable according to the statutory provisions. For other damages, we shall only be liable (subject to the next

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sentence) for intent and gross negligence. For other damages resulting from the breach of any crucial obligation whose fulfillment is essential to the proper performance of the contract, and on whose compliance you may regularly rely on, we shall also be liable for simple negligence, but this liability shall be limited to the foreseeable damages at the time of the infringement. The above provisions also apply to breaches of obligations by our vicarious agents. Liability under the Product Liability Act remains unaffected by the aforementioned provisions.

You are contractually bound to use the software updates provided by us within the framework of the software maintenance and/or leasing agreement and to back up your data before installing the software and regularly thereafter, especially before you make any changes to the hardware or software environment. Insofar as you are responsible for contributory negligence through the breach of contractual obligations or changes made to the software by you or third parties or for the improper use or incorrect operation of the product, we shall not be deemed liable.

We assume no liability for the selection, installation and use, as well as the intended results of the software. Additional expenses in processing resulting from the fact that the subject of the contract was transferred to a location other than the place of delivery shall be borne by you.

## X. Software Use, Copy Protection

1. On purchasing software, you will be granted a simple, non-exclusive right of use with the purchase of the software. You are permitted to make copies of the software for backup purposes only. The reproduction of manuals and seminar materials, even in part, is not allowed without our written permission.

2. The use of the software for commercial training and education requires our written permission.

3. With the purchase of a license, you acknowledge and fully accept the usage of copy protection and waive all claims aimed at eliminating this copy protection. We would like to point out that any attempt to use a full version of WSCAD without copy protection is illegal. The software must be activated online.

When purchasing or leasing software, your license is always bound to a dongle (i.e., a hardware protection plug, a so-called "hardware dongle", and/or a copy protection mechanism implemented in the software, a so-called "software dongle"). In case of loss and/or damage of this dongle (e.g., as a result of a system recovery after a system crash) your license to use the software expires completely, unless we replace this dongle for you. We replace software dongles only in return for the appropriate compensation for our efforts and - in order to prevent the potential misuse of your previous software dongle - only if you provide us with a written commitment to refrain from using the software with your previous software dongle and/or enabling third parties to use it. This cease and desist obligation is only sufficient if you agree to pay us, in each case of culpable infringement, a contractual penalty to be determined by us at our reasonable discretion, the amount of which shall be reviewed by a competent court at your request. We basically do not replace lost hardware dongles. If the hardware dongle is damaged, we will replace this at your expense, provided you return it to us in its entirety together with the chip, storage chip, circuit board, as well as the upper and lower cover plates with the seals intact.

## XI. Export

1. You are responsible for compliance with all the legal provisions up to the end user, if applicable.

2. If shipments are exported as ordered by you without any customs duty, you shall be liable to us for any subsequent claims by the customs administration.

## XII. Applicable Law, Severability

1. These terms and conditions and the entire legal relationship between you and us shall be governed exclusively by the laws of the Federal Republic of Germany, excluding all provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

2. Should one or more provisions in these terms and conditions or any provision within the framework of other agreements be rendered or deemed invalid, this shall not affect the validity of all the remaining provisions. The invalid provision shall then be replaced in this case by a valid provision that reflects the parties' original intentions as closely as possible.

## XIII. Jurisdiction

1. The place of performance for all obligations arising from this contract shall be 85232 Bergkirchen, Germany.

2. The exclusive place of jurisdiction shall be Munich if you are an entrepreneur or have no general place of jurisdiction in the Federal Republic of Germany. We do, however, reserve the right to institute legal proceedings through courts in your jurisdiction as well.

WSCAD GmbH  
HRB 90263  
Dieselstraße 4  
85232 Bergkirchen, Germany  
GERMANY  
Tel: +49 (0) 8131 / 3627-0  
Fax: +49 (0) 8131 / 3627 - 50

Amtsgericht München (District Court of Munich),  
VAT ID No. : DE 128 251 316  
Managing Director: Dr. Axel Zein, Moritz Buhl  
E-mail: [info@wscad.com](mailto:info@wscad.com)  
Internet: <http://www.wscad.com>