

General Terms and Conditions for Software Maintenance Agreements

Valid as of 1 October 2023



Article 1 – Object of agreement

(1) These Terms and Conditions for the maintenance of software form the sole basis of the software maintenance services offered by Klingelberg. Deviating or supplementary agreements – in particular also conflicting terms and conditions of purchase of the Customer – shall only apply if Klingelberg expressly confirms them in writing with reference to the fact that they constitute an amendment or supplement to the Software Maintenance Agreement; this shall also apply if Klingelberg does not expressly object to conflicting terms and conditions of purchase in individual cases. The written form requirement for amendments and supplements can only be waived by written agreement.

(2) Klingelberg provides maintenance services of the supplied user software for the precision measuring centers described in the respective offer. This Agreement shall not apply to other machines and software purchased by the Customer, including third-party software.

(3) Maintenance services include

- a) maintaining and restoring the operability of the software;
- b) updating the software
- c) documentation of services provided;
- d) consulting and application-specific technical support for the Customer in accordance with para. (4);
- e) periodic maintenance services as specified in this Agreement (e.g. software tests).

(4) Maintenance also includes the documentation associated with the software provided in digital form (operating instructions/user manual). A change of hardware (PC) or the Customer's operating system as well as individual adaptations of the software are not included.

(5) The Software Maintenance Agreement does not cover the initial installation of the software, including configuration and any necessary adjustments (e.g. for existing machines), the instruction and training of Customer personnel and the creation of measurement programs. The elimination of faults and damages for which the provider is not exclusively or predominantly responsible, but which are caused by improper operation on the part of the Customer, by faulty or inadequate hardware, by an interruption of the power supply, by the influence of third parties or by force majeure are also not covered by this Agreement. It also does not cover changes to database settings, server configurations or system administration. These services can be agreed and invoiced in individual cases against separate remuneration in accordance with the provider's applicable hourly rates.

(6) For the initial conclusion of a Software Maintenance Agreement, it is necessary that the software versions for all precision measuring centers operating in the network and covered by the Agreement are identical and not older than 1 year. Measuring centers that do not fulfill this requirement must receive an update before being included in the Software Maintenance Agreement.

Article 2 – Scope of services

(1) The software is continuously updated. The Customer receives one free update per year for all software packages included in the service schedule. This update is provided as a package. The Supplier undertakes to inform the Customer or the Customer's personnel once upon request about the type and scope of the services performed for the Customer since the last update. Updates are only installed at the Customer's request. The same applies if a planned update is not possible on the existing hardware. In this case, the hardware and possibly also the operating system must be replaced by the Customer and at the Customer's expense. As a rule, hardware should be replaced after four years at the latest.

(2) Klingelberg is obliged to investigate errors in the software reported by the Customer and, if the error can be reproduced by Klingelberg, to provide the Customer with information to eliminate the consequences of such errors. An error exists if the software does not perform a function specified in its statement of work or does not work properly in any other way.

(3) Klingelberg shall respond to messages received from the Customer during the helpdesk's office hours (Monday to Friday 7:00 am to 5:00 pm, except on public holidays at Klingelberg's place of business, hereinafter referred to as "service hours") within one working day during service hours.

(4) In the event of material fault in the software, Klingelberg is obliged to rectify the error in one of the following updates. A fault is deemed to be material if a assured function is permanently not available. The fault shall also be deemed to have been rectified if it can be bypassed by a solution that is deemed acceptable to the Customer and is essentially comparable in terms of functionality. A prerequisite for the search for and rectification of faults is the fulfillment of the Customer's obligations to cooperate in accordance with Article 3.

(5) Other faults shall only be rectified if this is possible using economically reasonable efforts. This is not the case if essential parts of the software need to be reprogrammed. Notwithstanding this, Klingelberg will endeavor to also rectify other faults, however, without assuming any obligation to do so.

(6) Maintenance should generally be carried out remotely. (See Article 3 (2) – Customer's duty to cooperate.)

(7) Maintenance will be performed solely by qualified personnel who are familiar with the software specified in the service schedule. Klingelberg shall provide the tools (test programs, test data, etc.) suitable for providing the services and corresponding to the proven state of the art.

(8) Klingelberg employees do not enter into an employment relationship with the Customer. The Customer shall issue instructions exclusively to the responsible employee designated by Klingelberg with effect for and against Klingelberg. The Customer shall ensure that Klingelberg employees are not involved in the customer's operational processes and organization.

(9) The involvement of subcontractors is only possible with the prior express consent of the Customer.

(10) When maintaining the software provided, Klingelberg will regularly provide the latest version of the software and, if necessary and with the Customer's prior consent, install it. Only these software versions will then be maintained.

(11) If the customer does not agree to the installation of a new program version, older program versions can continue to be operated for a maximum period of 12 months. If the customer does not upgrade to the latest program version within this period, Klingelberg shall be released from its performance obligations under this Agreement to the extent that these relate to the installed software.

(12) Any claims of the Customer arising from contractual or statutory liability for defects in connection with the purchase of the precision measuring centers or the software remain unaffected by this Agreement.

(13) The validity of the Software Maintenance Agreement shall otherwise remain unaffected, even if individual software products are discontinued by the Provider. In this case, the agreement on support and updates is reduced by the respective discontinued software product; all other services and software products described remain unaffected.

Article 3 – Customers duty to cooperate

(1) The Customer shall inform Klingelberg immediately in writing of any functional deviations and shall support Klingelberg in the investigation and rectification thereof within reasonable limits. This includes, in particular, submitting fault reports to Klingelberg in text form at its request and providing other data and log files suitable for analyzing the fault.

(2) If necessary, the Customer shall grant Klingelberg access to the data processing systems on which the programs specified in the statement of work are installed. The Customer shall provide the technical facilities (power supply, telephone connection and data transmission lines) required for the performance of all maintenance services to an appropriate extent free of charge. In particular, the Customer is obliged to provide the Supplier with secure access to

all necessary IT systems via remote access ("remote maintenance") as is customary in the market.

(3) Within 4 weeks of the commencement of the Agreement, the Customer shall nominate a responsible employee to Klingelberg as a contact who is able to provide the information required for the performance of the Agreement and to make decisions themselves or bring them about without delay.

(4) The Customer shall independently document any changes made to the settings as well as the start and duration of functional restrictions.

(5) The Customer shall install or have Klingelberg install new program versions relevant to the security of the software or the machine concerned without delay if Klingelberg has informed the Customer of the relevance of this update and the need to adopt the new program version without delay.

(6) It is the Customer's responsibility to carry out proper data backups and to properly maintain the software and hardware environment of the software not covered by the service schedule. The Customer must protect the hardware and software in particular against unauthorized access by employees or other third parties, viruses, Trojans and other malware.

Article 4 – Secrecy and data protection

(1) Both parties shall maintain secrecy about all business and operational matters of which they become aware and shall treat all information in connection with the fulfillment of this Agreement as strictly confidential, even beyond its expiry. At the request of one of the parties, the parties shall also conclude a non-disclosure agreement that is customary in the market and meets the requirements of the German Law on the Protection of Trade Secrets [Gesetz zum Schutz von Geschäftsgeheimnissen, GeschGehG].

(2) When processing personal data, the parties shall comply with the applicable data protection laws. If necessary, the contracting parties will mutually regulate details in a contract for commissioned processing in accordance with the requirements of Art. 28 (3) of the General Data Protection Regulation (GDPR).

Article 5 – Rights of use

(1) The Customer receives a simple, non-exclusive, and non-transferable right to use the contractual items that Klingelberg provides to the Customer (e.g. updates, supplementary program manuals). Any deviating agreements on rights of use from other contracts concluded in connection with the software shall remain unaffected.

(2) If the Customer uses contractual items that replace earlier ones, the right to use the replaced contractual item shall expire.

Article 6 – Rights of third parties

(1) Klingelberg warrants that the services it provides are free from rights of third parties. Should it be established that this is not the case, Klingelberg shall, at its own expense and at its discretion, procure the necessary rights of use for the Customer or modify its service in such a way that the rights of third parties are no longer impaired without any significant change to the services concerned and shall reimburse all necessary expenses.

(2) The Customer grants Klingelberg the right to convert the Customer's own data into other formats, to migrate, edit or modify Customer data, to edit or modify such data for the Customer. On its part, the Customer shall indemnify Klingelberg against all claims asserted by third parties as a result of such processing or modifications.

Article 7 – Warranty

(1) Klingelberg warrants that the latest version of the contractual software installed as part of the ongoing updates will provide the functions specified in the statement of work during the term of the Agreement.

(2) If Klingelberg fails to meet its obligation to perform within the period specified in Article 2 (2) of these Terms and Conditions, the Customer shall set a reasonable period of grace. Within this period of grace, Klingelberg shall first provide the service again or, if the object of the service, correct the fault by subsequent improvement. If this should fail and if the Customer cannot be reasonably expected to accept further subsequent improvement, the Customer shall be entitled to the statutory claims for defects.

(3) Warranty claims of the Customer shall expire within a period of one year.

Article 8 – Liability of the Supplier

(1) Klingelberg shall be liable without limitation for intent, fraudulent intent, and gross negligence. In the event of damage resulting from injury to life, limb, or health of a person, within the scope of application of the Product Liability Act [Produkthaftungsgesetz, ProdHaftG] or in the case of guarantees expressly assumed in writing, Klingelberg shall also be liable for slight negligence. In all other respects, Klingelberg shall only be liable for slight negligence in the event of a breach of a material contractual obligation, the fulfillment of which is essential for the proper performance of the Agreement and on the observance of which the Customer regularly relies and may rely (cardinal duty).

(2) The limitation of liability applies in the same way in favor of the bodies, other representatives, employees, and vicarious agents of the Supplier.

(3) Liability for any consequential damages (loss of profit, indirect damages, etc.) is excluded. Otherwise, even in the case of simple negligence, the amount of liability shall be limited to the remuneration paid by the Customer per calendar year.

(4) Klingelberg shall only be liable for loss of data if the customer has carried out system checks and data backups at regular intervals. In this case, liability is limited to the costs that would have been incurred in the event of a restoration following a proper system check and data backup.

Article 9 – Remuneration

(1) The Customer pays an annual fee for the software maintenance and hotline services. The fee is calculated according to the price list valid at the beginning of the contractual year for the contractual software installed at the Customer. If the software maintenance and hotline agreement is extended in accordance with Article 12 (2), the amount of remuneration for the following contractual year shall be based on the price list valid at the time of the extension. An increase of more than 10% compared to the current contract year entitles the Customer to terminate the Agreement within 30 days of receipt of the notification with effect from the end of the expired contract year.

(2) Payment is due at the beginning of each contract year within 30 days of receipt of the invoice without deduction.

(3) The statutory value added tax will be charged additionally.

Article 10 – Term of the Agreement

(1) The Agreement commences upon signature by both contracting parties.

(2) The Agreement has a fixed contract term of 3 years, after which the contract term is automatically extended by 1 year and can be terminated at the end of the respective contract term with a notice period of 3 months.

(3) The Agreement may be terminated extraordinarily by either party for good cause.

(4) Any termination must be in writing to be effective (Section 126 (1) of the German Civil Code [Bürgerliches Gesetzbuch, BGB]).

Article 11 – Subsidiaries

All rights and obligations under this Agreement applicable to Klingelberg may be exercised in the same way by the companies of the Klingelberg Group.

Article 12 – Venue and applicable law

The law of the Federal Republic of Germany shall apply to the exclusion of the UN Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) and to the exclusion of conflict of laws principles; Art. 3 (3) and (4) of the Rome I Regulation shall remain unaffected.

The exclusive, also international, place of jurisdiction for all direct or indirect disputes is Cologne. This shall not apply if the dispute concerns claims other than property claims or if another exclusive place of jurisdiction is established by law.

Article 13 – Written form requirement

No verbal collateral agreements were made. Amendments or additions to this Agreement must be made in writing to be effective (Section 126 (1), (2) of the German Civil Code). This also applies

to agreements relating to the written form requirement itself. Electronic communications do not satisfy the written form requirement.

Article 14 – Severability clause

Should individual provisions be or become invalid in whole or in part, this shall not affect the validity of the remaining terms or provisions. In such a case, the parties shall agree on a legally valid provision that comes closest to the intended economic purpose of the invalid provision; the same shall apply accordingly if the Agreement should contain a gap.