

# General Terms

## for the Maintenance of Software

### Software Maintenance

#### 1. Application of the Agreement

- 1.1. The following terms shall apply exclusively to all software maintenance agreements concluded between QuinLogic GmbH, Aachen (hereafter QuinLogic) and its clients.
- 1.2. Alterations or additions to these terms shall be effective only if set down in a separate written agreement clearly identified as such and only if made with the prior written agreement of the authorized representative of QuinLogic.

#### 2. Offers

Offers made by QuinLogic shall be binding only if made in written form. Unless otherwise determined in the offer, QuinLogic shall be bound by the terms of an offer for a period of 90 days. The contents of an offer are confidential until an agreement has been concluded.

#### 3. Object of Maintenance

The object of maintenance shall be the software described in the maintenance list of the software maintenance agreement in the latest version delivered by QuinLogic to the client, which is the most recent version at the time of delivery.

#### 4. Maintenance Obligations

- 4.1. Unless otherwise agreed in the software maintenance agreement, QuinLogic shall provide the following services to the client within the Federal Republic of Germany on workdays from Mondays to Fridays between the hours of 8 a.m. and 5 p.m.:
  - at QuinLogic's discretion, elimination of software faults reproducibly documented by the client or notification to the client of means of avoiding or temporarily bypassing such faults (hereafter rectification of faults). A fault shall be deemed to exist if the software fails to perform the contractually agreed functions when used appropriately and in accordance with the terms of the agreement.
  - delivery of the most recent released version of the software and the most recent modifications of existing released versions on the agreed data storage medium.
  - delivery of the most recently issued or modified documentation.
  - assistance by telephone in solving any software problems which occur and which are precisely described by the client
  - assistance by telephone in solving problems in the use of the software for a specific application which are precisely described by the client. These services shall be remunerated by payment of the lump-sum maintenance charges specified in section 1.1.
- 4.2. In addition, the customer may make use of the following services:
  - installation of the software to be maintained under 4.1.
  - delivery and installation of significant modifications in laws in adapted software.
  - adaption of software for use under a different operating system, on a different hardware system or with a different programming language.
  - necessary software adaptations entailed by modifications to existing operating systems by the producers.
  - provision of training sessions which become necessary due to modifications or improvements. These services must be agreed separately. They shall be charged for according to QuinLogic's list of fees currently in force.

#### 5. Conditions and Performance of Maintenance

- 5.1. The client shall have all works performed by QuinLogic or with QuinLogic's consent. The client shall place the product/systems at QuinLogic's disposal for the necessary working time and shall be responsible for ensuring that the work can be carried out with due speed. In particular, the client shall take the necessary safety precautions and shall create the operating conditions necessary for the performance of the work. Insofar as may be necessary, the client shall place at QuinLogic's disposal free of charge:
  - any required documentation and information,
  - a public telephone line in the vicinity of the equipment together with the necessary technical communications devices,
  - suitable personnel (e.g. to operate machines),
  - and at QuinLogic's request a second person required for safety protection purposes.
- 5.2. Fault elimination shall be conditional upon the client's documenting the effects the fault to the agreed QuinLogic agency in writing.
- 5.3. Unless otherwise agreed, rectification of faults shall be undertaken by the responsible QuinLogic agency and where expressly agreed shall be carried out at place of installation of the software.

#### 6. Default

- 6.1. If QuinLogic is in default in the performance of its obligations, the client is entitled following expiry of a period of grace to withdraw from the software maintenance agreement. So far legally permissible, other claims against QuinLogic are excluded.

#### 7. Right of Use of the Software

- 7.1. The terms agreed by the parties relating to rights of use of the software and the liability of QuinLogic for breaches of copyright and protection rights also apply to the software and documentation provided to the client under maintenance agreement.

#### 8. Warranty

- 8.1. QuinLogic guarantees that the maintenance carried out on the software shall be free from defects preventing or substantially detracting from the contractually agreed use, provided that the maintained software is used appropriately and in accordance with their terms of the agreement.
- 8.2. QuinLogic shall remove maintenance faults according to the terms laid down in 4.1. and 5.
- 8.3. The period of warranty shall be 6 month, commencing with notification of the maintenance fault by the client according to 5.2.
- 8.4. In the event that QuinLogic shall fail to eliminate a fault before expiry of an appropriate period of grace notified to it in writing, the client shall be entitled to claim a price reduction or the annulment of the software maintenance agreement. Further claims in consequence of maintenance defects, in particular claims for damages, shall be excluded insofar as there is no enforced liability on the grounds of guaranteed attributes of the software.

#### 9. Services outside the Scope of the contractual Obligations

In the event that QuinLogic shall be able to prove that no liability under the maintenance agreement or under warranty exists in the case of a reported fault, the client shall bear the costs for location of the fault and for goods and services provided by QuinLogic according to 4.1. and section 8.

#### 10. Duration of the Agreement and Notice of Termination

- 10.1. The date of commencement of the contractual obligations is specified in the software maintenance agreement.
- 10.2. The minimum service period is 24 month.
- 10.3. On elapse of the minimum service period, the software maintenance agreement shall be prolonged for an indefinite period. Notice of termination of the agreement or of one or more items in the list of maintenance services may be given with a period of three month to the end of a quarter.

#### 11. Remuneration and Terms of Payment

- 11.1. The following charges will be invoiced to the client:
  - a yearly charge for maintenance services (4.1.) payable as a lump sum in advance.
  - for assistance provided at the client's premises, remuneration for traveling time, travel costs and expenses and for rectification of a fault outside normal working hours will be charged according to the effort incurred at the rates quoted in the price list for services currently in force.
  - charges for services under 4.2. immediately following performance of the service.

In the case of monthly lump-sum payments the contractual obligations commence during a calendar month, the charge per working day of the said month shall be one twentieth of the monthly lump sum. Payments are to be made to the account of QuinLogic within 30 days of the date of the invoice.

- 11.2. Value added taxes and any other legal imposts shall be added at the rates obtaining at the date of invoicing.
- 11.3. In the case of any lump-sum charge, QuinLogic is entitled to give notice of an alternation to its charges in line with cost factors following a period of three month to the end of the quarter, but not before expiry of the minimum service period.
- 11.4. Payments due under the terms of the agreement may not be set off against contested claims.

#### 12. Liability

- 12.1. QuinLogic shall be liable in accordance with prevailing law for any injury to persons for which it bears responsible to the products/systems which it has supplied. In the event of any loss of or damage to data storage media, the obligation of replacement shall not include costs for the replacement of lost data.

- 12.2. Personal liability of QuinLogic employees acting as QuinLogic's vicarious agents is excluded.
  - 12.3. Claims of any legal grounds whatsoever above and beyond the claims of the client expressly stipulate herein, especially claims in respect of damages resulting from advice and support pertaining to the use of the products/systems, are excluded, providing that there is no enforced liability on the grounds of intent or gross negligence or due to the absence of guaranteed attributes.
- 13. Retention of Title**
- Retentions of title by the client are excluded insofar as they are not based upon the aforesaid software licensing agreement.
- 14. Miscellaneous**
- 14.1. In the interests of the maintenance personnel performing services on his behalf, the client shall ensure that his employees and equipment comply with work safety regulations.
  - 14.2. Claims are not assignable without prior written agreement of the parties. QuinLogic is entitled to commission subcontractors to perform maintenance services.
  - 14.3. QuinLogic may assign its rights and obligations under this agreement to a third party. Such assignment shall be null and void in the event of its rejection by the client within a period of four weeks following receipt by the client of an appropriate communication; in any such communication, QuinLogic shall inform the client of his right of rejection.
  - 14.4. The law of the Federal Republic of Germany shall apply.
  - 14.5. The place of performance and jurisdiction for all disputes arising out of or in connection with this agreement is Aachen. Notwithstanding, QuinLogic shall also be entitled to institute actions at the legal place of jurisdiction of the client.
  - 14.6. The parties shall substitute for any invalid provisions of the agreement valid provisions which fulfill the intended purpose as closely as possible. The same shall apply in the event of any omissions in the agreement.