

General Terms and Conditions

For the granting of rights of use to Standard Software

Software license

1. Scope, Parts of the Contract, Amendment to Contract, and Definitions

- 1.1 The following terms and conditions exclusively apply to contracts between MAGMA Giessereitechnologie GmbH, Aachen (hereinafter referred to as MAGMA) and its customers regarding the granting of rights of use for "Standard Software". If the Customer also uses its own General Terms and Conditions, the contract shall also be concluded without explicit agreement on the inclusion of General Terms and Conditions. Insofar as the content of the different General Terms and Conditions is identical, these shall be deemed to have been agreed. Conflicting individual provisions shall be replaced by the provisions of dispositive law. The same applies in the event that the Customer's terms and conditions contain provisions that are not contained in these terms and conditions. If the present General Terms and Conditions of MAGMA contain regulations that are not contained in the Customer's General Terms and Conditions, the present General Terms and Conditions shall apply. Any standardized reference to the Customer's own terms and conditions is hereby expressly rejected.
- 1.2 The software supplied by MAGMA may partly contain software components that are developed and licensed by other manufacturers. If this is the case, the terms of use of the respective manufacturer apply to these software components. Upon conclusion of the contract, MAGMA will - at MAGMA's discretion - provide the Customer with either originals of the license terms in printed or digital form or links to the license terms of the respective manufacturers available on the Internet or in the software.
- 1.3 With the conclusion of the contract, all previous agreements, understandings, conventions and settlements concerning the contract lose their validity. The contract and its annexes and these General Terms and Conditions constitute the sole contractual basis for the undertakings specified in the contract. Amendments or supplements to these Terms and Conditions require a separate written agreement. They must be marked as such and require the prior written consent of the authorized representatives of MAGMA to be effective. Should any provision of these General Terms and Conditions be or become invalid, this shall not affect the validity of the remaining provisions.
- 1.4 Definitions
 - 1.4.1 "Delivery" means, according to the individual contractual agreement of the parties, the delivery of the "Standard Software" to the Customer for installation by the Customer himself or for installation by MAGMA at the Customer's premises;
 - 1.4.2 "Documentation" is the operating manual for the Customer, consisting of electronic and written user information, specifications and descriptions published by MAGMA;
 - 1.4.3 "Hotfix" means a program version developed by MAGMA to correct or circumvent errors in the "Standard Software" which is made available to the Customer by MAGMA and which has undergone only very limited functional, system, regression or other test procedures which MAGMA otherwise uses as part of normal quality assurance. The goal of a "Hotfix" is to provide an error correction as quickly as possible. Each Hotfix is uniquely identifiable by its Hotfix number;
 - 1.4.4 "Patch" means a new program version which contains an increase in performance and/or functionality compared to the previous program version of the "Standard Software". "Patches" are made available to the Customer at regular intervals by MAGMA if the Customer has concluded a maintenance contract with MAGMA. "Patches" are subject to extensive functional, system, regression, application or other test procedures within the scope of quality assurance. Each "Patch" is uniquely identifiable by its Patch number;
 - 1.4.5 "Release" means a program version which contains a significant increase in performance and/or functionality compared to the previous program version of the "Standard Software". "Releases" are made available to the Customer at regular intervals by MAGMA if the Customer has concluded a maintenance contract with MAGMA. Each "Release" is subject to extensive functional, system, regression, application, or other test procedures within the scope of quality assurance. Each "Release" is uniquely identifiable by its Release number;
 - 1.4.6 "Standard Software" shall mean the "Release" of the Software made available to the Customer at the time of "Conclusion of the Contract" and precisely specified in the corresponding quotation;
 - 1.4.7 "Location" means the (branch) address of the Customer for which the Customer is granted rights to use the "Standard Software" in accordance with the contractual agreement;

- 1.4.8 "System Environment" means the hardware and software required to operate the supplied "Standard Software". The current system requirements provided in the quotation or order confirmation or on the website shall apply;
- 1.4.9 "Territory" means the territory for which the Customer is granted rights to use the "Standard Software" in accordance with the contractual agreement;
- 1.4.10 "Conclusion of Contract" is the time at which the Customer and MAGMA submit their declarations of intent to conclude the contract in written form;
- 1.4.11 "Confidential Information" means all information, documents and data which has been brought to the knowledge of one Party by the other Party or which has come to the knowledge of the other Party in the course of the cooperation and which is marked or declared as "Confidential". "Confidential Information" includes in particular the source code of the "Software". This must always be regarded as "Confidential" within the meaning of this provision and, notwithstanding the rights and obligations of the Customer described in this contract, may not be made accessible to third parties, nor may third parties, in particular competitors of MAGMA, be given the opportunity to deduce the source code.

2. Services provided by MAGMA, Transfer of Risk, Customer's Duties to Cooperate

- 2.1 MAGMA supplies the Customer with the programs listed in the quotation in object code form together with the agreed documentation. If contractually agreed, MAGMA will install the software at the Customer's site and perform a functional test. MAGMA is entitled to partial deliveries and partial services and can use the assistance of third parties to fulfill its obligations, as far as this is reasonable for the Customer; objection rights of the Customer according to Art. 28 GDPR, regarding the use of subcontractors remain unaffected.
- 2.2 If the Customer is granted temporary usage rights to the "Standard Software" under the contract, the "Standard Software" will be continuously updated and further developed by MAGMA for the duration of the contract. Changes to the "System Environment" are covered by the software rental contract, as far as changes to the operating system platform, as set out in the performance description (e. g. Microsoft Windows 10 etc.), are concerned. If MAGMA makes new "Releases" of the "Standard Software" available and their operation changes, MAGMA will provide the Customer with an updated "Documentation". Details are regulated in § 12.
- 2.3 The subject matter of the contract is exclusively the "Standard Software" described in the contract with the properties, features, intended and possible uses specified in the product description as well as the "Documentation". Descriptions in test programs, product or project descriptions, also on the Internet, are expressly not descriptions of the product quality within the meaning of §§ 434, 535, 633 BGB (German Civil Code) - not least because the "Standard Software" is subject to constant further development, so that all rights are reserved to change specifications at any time and for any reason. Any assurance of a property that goes beyond the aforementioned scope of performance must therefore be expressly designated as such in writing in order to be effective.
- 2.4 The risk of accidental loss shall be borne by the Customer upon "Delivery". In the case of shipment of goods, the risk shall pass to the Customer upon transfer of the goods to the forwarding agent, the carrier or other messenger selected by MAGMA at its reasonable discretion.
- 2.5 MAGMA Employees
 - 2.5.1 MAGMA undertakes to use only qualified and reliable personnel for the provision of its services. MAGMA shall be responsible for the selection and assignment of employees and other agents (hereinafter referred to collectively as "Employees") used to perform the agreed services. The performance of services, induction and task-related training of the "Employees" shall take place under the responsible management of MAGMA. MAGMA shall have sole disciplinary powers concerning the "Employees", regardless of the place of work performance.
 - 2.5.2 For the duration of their work at a Customer site, the "Employees" shall be granted the right to stay on the Customer's premises during normal working hours. The Customer is entitled to refuse access to the Customer's premises to individual "Employees" on important grounds. If the refusal is not based on an important ground for which only MAGMA is responsible, MAGMA is entitled to demand an adjustment of the agreed dates and remuneration, as far as these have become necessary due to the refusal of access and are otherwise reasonable.

- 2.5.3 The technical supervision of the "Employees" is the exclusive responsibility of MAGMA. If the Customer requests the replacement of an "Employee" with a reason that is objectively reasonable, MAGMA is obliged to replace the employee within a reasonable time frame.
- 2.5.4 MAGMA is solely responsible for the fulfillment of contractual, legal, official and trade association obligations to the "Employees". MAGMA will indemnify the Customer from any claims asserted against the Customer. In particular, this includes all wage and salary payments as well as all other payment obligations resulting from employment or service relationships, such as social security contributions. It is exclusively the task of MAGMA to make agreements and take measures that regulate its relationship with the "Employees".
- 2.6 The Customer shall provide MAGMA with all data, documents and information about the software to be delivered and its "System Environment" that are necessary for the performance of the service and, in addition, shall provide MAGMA with the necessary support, to be specified in the respective contract, for the fulfilment of the agreed services free of charge. In the case of development services, this includes, in particular, a complete description of services and procedures, as well as test data, in particular for the acceptance test. The final version of the descriptions must be available to MAGMA at the agreed time. The Customer is liable for the correctness of the documents, information and data provided by him. If the Customer wishes a change of the final version of his documents, information and data or accepted individual services, the change only becomes binding if MAGMA has agreed in writing.
- 2.7 The compliance of the Customer with the cooperation obligations specified in the contract and/or its appendices and/or these General Terms and Conditions (in particular the preceding paragraph 2.6) is essential for the performance of MAGMA in accordance with the order. If it is evident to MAGMA that the Customer does not fulfill his obligation to cooperate in accordance with the contract, MAGMA will inform the Customer in writing (by post, fax or e-mail) and point out the consequences of any further delay. MAGMA will not be in default as long as the Customer does not fulfill his obligations to cooperate according to the contract.

3. Terms of Payment, Price Adjustment

- 3.1 Payments are to be made without deduction to an account of MAGMA within 30 days after the invoice date or as agreed in the corresponding quotation. Value-added tax and any other statutory taxes will be charged additionally, in each case at the rates valid at the time of invoicing. In his payments, the Customer must stipulate the debt to which he pays. If he fails to do so, incoming payments will first be booked against existing accessory claims (interest, etc.) and then against the oldest debt of the Customer.
- 3.2 Invoices shall be issued upon delivery or as agreed. The amount of the remuneration and the reimbursement of other expenses (incidental costs, expenses etc.) shall depend on the individual agreement between the parties. All payment modalities such as partial payments, rebates, discounts etc. are regulated in individual contracts. The same applies to travel costs and expenses.
- 3.3 Upon conclusion of a rental or maintenance contract, the rental or subscription of annual maintenance fees shall be invoiced annually and shall be paid in advance for the respective accounting period. For the current year of "Conclusion of the Contract", the monthly rates are calculated in advance until the end of the year. The maintenance fees are to be paid as of the "Conclusion of the Contract".
- 3.4 If the Customer does not meet his payment obligations on time, MAGMA can claim damages for delay in the amount of the legal default interest as well as the legally defined lump sum from the Customer without prejudice to the assertion of further damages. If the Customer does not fulfill his payment obligations despite a reminder and a reasonable extension, MAGMA is entitled, notwithstanding the rights of sentence 1, to stop work on all projects running on behalf of the Customer as well as to withdraw from the respective contract, reserved goods according to clause 4.2 and to invoice the Customer for all costs incurred up to that point.
- 3.5 The exercise of a right of retention, which is not based on a right from this contractual relationship, is excluded. The Customer shall only be entitled to exercise a right of retention or to set-off insofar as the underlying counterclaim has been legally established or is not disputed. Notwithstanding the foregoing, the Customer's right to set-off shall not be excluded or limited insofar as the claims set off are based on additional costs of remedying defects or completion.

4. Rights of Use

- 4.1 The subject matter of these License Terms is the "Standard Software" in the "Release" valid at the time of the "Conclusion of the Contract", consisting of a copy of the respective computer program in object code and a copy of the associated "Documentation". In addition, these License Terms shall apply to all versions of the "Standard Software", including "Releases", "Patches" and "Hotfixes", created later and made available to the Customer under a software rental agreement, the warranty period or a separately concluded maintenance agreement. In addition, these license conditions apply accordingly to all other copyrighted works provided to the Customer by MAGMA as part of its deliveries and services, in particular but not limited to graphical user interfaces, project or product descriptions, visualizations, or logos.
- 4.2 Reservations regarding the Transfer of Rights of Use and Ownership
- 4.2.1 If the Customer is to be granted permanent rights of use to the "Standard Software" under the contract, the Customer shall be granted only a temporary right of use to the delivered "Standard Software" until full payment of all claims existing at the time of the "Delivery" from this contractual relationship (hereinafter referred to as "Fulfillment of Conditions") by MAGMA. The transfer of unlimited rights of use only takes place after the "Fulfillment of Conditions"; if payment is made by check or bill of exchange, the "Fulfillment of Conditions" is deemed to be the redemption of the same.
- 4.2.2 If MAGMA asserts the reservation, the right of the Customer to further use the "Standard Software" expires, unless MAGMA informs the Customer otherwise. In this case, all program copies made by the Customer must be deleted.
- 4.2.3 Physically delivered goods are subject to retention of title until the payment claim resulting from the respective order has been paid in full.
- 4.2.4 In case of seizure or other possible impairment of the rights of MAGMA to the "Standard Software" or the physically delivered goods within the meaning of this provision, the Customer must immediately point out the conflicting rights of MAGMA. In addition, the Customer is obligated to inform MAGMA immediately by telephone or fax as well as to subsequently inform MAGMA in writing about the processes that have led or could lead to an impairment of the rights of MAGMA.
- 4.2.5 If the Customer does not fulfill an obligation specified in this regulation, MAGMA may demand a contractual penalty that is reasonable in amount. MAGMA will determine the contractual penalty in individual cases at its reasonable discretion, taking into account the severity of the violation, the fault of the Customer and the damage incurred by MAGMA; this discretion is fully verifiable in court. Regardless of this, MAGMA reserves the right to assert claims for damages.
- 4.3 The rights of use shall be transferred in accordance with the contract permanently or for a limited term as specified in the contract. The limitations of the above clause 4.2 remain unaffected.
- 4.4 According to the agreement of the parties in the contract, the Customer acquires licenses to the "Standard Software" with the following license scope:
- 4.4.1 MAGMASOFT® node locked is a single-user license and entitles the Customer to permanently and temporarily copy and use the "Standard Software" on a single computer for license server and application. This license is limited to the agreed "Territory" and the agreed "Location". The transfer of the "Standard Software" by way of leasing or other sublicensing to any third parties, i.e. other natural or legal persons, is contractually prohibited, regardless of whether these are to be regarded as affiliated companies of the Customer within the meaning of § 15 AktG (German Stock Corporation Act) or otherwise connected with the Customer. The Customer's agents who exercise his right of use exclusively on his behalf shall not be deemed third parties.
- 4.4.2 MAGMAfloat territory is a network license and entitles the Customer to the permanent and temporary duplication and intended use of the "Standard Software" on one license server as well as on a number of client computers. This license is spatially limited to the agreed "Territory" and the agreed "Location".

The "Standard Software" may only be used simultaneously by the contractually agreed number of simultaneous users. Use means the volatile storage of the "Standard Software" in the main computer memory required for the use of the functions of the "Standard Software".

The transfer of the "Standard Software" by means of leasing or other sub-licensing to any third parties, i.e. other natural or legal persons, is contractually prohibited, regardless of whether these are to be regarded as affiliated companies of the Customer within the meaning of § 15 AktG (German Stock Corporation Act) or are otherwise connected with the Customer. The Customer's agents who exercise his right of use exclusively on his behalf shall not be deemed third parties.

- 4.4.3 MAGMA site licenses are network licenses and entitle the Customer to the permanent and temporary duplication and intended use of the "Standard Software" on the contractually agreed number of license servers and a variety of client computers. For MAGMA site standard, the license is limited to the agreed "Territory" or the agreed "Territories" and the agreed "Locations"; for MAGMA site general, it is - notwithstanding Section 11 - territorially unlimited.

The "Standard Software" may only be used simultaneously by the contractually agreed number of simultaneous users. Use means the volatile storage of the "Standard Software" in the main computer memory required for the use of the functions of the "Standard Software".

It is contractually prohibited to transfer the "Standard Software" by way of leasing or other sub-licensing to third parties, i.e. other natural or legal persons who are not to be regarded as affiliated companies of the Customer within the meaning of Section 15 AktG (German Stock Corporation Act) or are otherwise connected with the Customer. The Customer's agents who exercise his right of use exclusively on his behalf shall not be deemed third parties.

4.4.4 Redundant License Server

Irrespective of the agreed license (Sections 4.4.1, 4.4.2, 4.4.3), the Customer may acquire additional server licenses with the purpose of increasing the reliability of the "Standard Software" (Redundant License Server). These additional server licenses entitle the Customer to the permanent and temporary duplication and intended use of the "Standard Software" on the agreed number of license servers, whereby productive use is only permitted in cases where the primary license server fails. The licenses are spatially limited to the agreed "Territory" and the agreed "Location".

- 4.5 The rights of the Customer to make a backup copy of the "Standard Software" and to store it on a computer or an external data carrier remain unaffected.
- 4.6 The Customer is not entitled to modify, edit, translate, port, reverse engineer, disassemble, decompile or otherwise interfere with the source code of the "Standard Software". The Customer is not entitled to correct occurring program errors himself as long as MAGMA or authorized third parties offer the error correction at market conditions. If, in addition to the information contained in the "Documentation", the Customer needs further information for the interoperability of the "Standard Software" with independently created other computer programs, he will first send a request to MAGMA. MAGMA reserves the right to provide the necessary information. Otherwise, the provisions of the Copyright Act (§§ 69d, 69e UrhG) remain unaffected.
- 4.7 The use of the "Standard Software" within the framework of virtualization services, in which the programs can be accessed remotely and used to achieve certain calculations, without the "Standard Software" having to be loaded into the main memory of a computer, is contractually prohibited.
- 4.8 The Customer shall not be entitled to change, remove or circumvent any proprietary notices attached to the "Standard Software" including the "Documentation", in particular copyright notices or trademarks as well as serial numbers, license codes or security mechanisms. The Customer shall take appropriate precautions to protect the "Standard Software" from unauthorized access by third parties. He shall keep any original data carriers and data carriers with (backup) copies made by him in accordance with the contract as well as the "Documentation" at a secure location. He shall point out to his employees that it is not permitted to make copies beyond the contractual scope and that the other requirements of this Clause 4 must be complied with.
- 4.9 All other rights to the "Standard Software" shall remain with MAGMA or its licensor(s). MAGMA remains entitled to the joint use and other arbitrary use of the concepts underlying the programs, whereby any know-how acquired by the Customer within the scope of the "Delivery" must be kept secret.
- 4.10 MAGMA provides the Customer with databases, containing especially material data. The Customer is only entitled to reproduce, distribute and publicly reproduce the database or content of the database to the extent that this is essential for the contractual use of the "Standard Software" including the necessary evaluation of the database or parts of the database.

5. Obligation to give Notice of Defects

- 5.1 The Customer shall examine the "Standard Software" on the basis of the product description and "Documentation" sent to him immediately after "Delivery", i.e. test the most important functionality of the "Standard Software" on a test system with real data and notify MAGMA of any defects within a reasonable period of time.
- 5.2 The Customer shall also notify MAGMA immediately of any defects occurring after "Delivery" without prejudice to paragraph 1.
- 5.3 When investigating and formulating a complaint according to paragraphs 1 and 2, the Customer must take into account the information provided by MAGMA regarding the problem analysis within the scope of what is reasonable and pass on to MAGMA all information available to him that is necessary for the evaluation and elimination of the defect.
- 5.4 If the Customer does not notify MAGMA of a defect that is recognizable during a proper examination or that he recognizes, or does not notify MAGMA of a defect within a reasonable period of time, the Customer assert any claims based on this defect (§§ 377 HGB, 536b BGB).
- 5.5 Paragraph 4 does not apply if MAGMA fraudulently concealed the defect in question.

6. Warranty

- 6.1 MAGMA warrants as follows (clauses 6.2 to 6.8) that the "Standard Software" or maintenance services provided by MAGMA are free from defects that prevent or significantly reduce the agreed use of the "Standard Software" when used by the Customer in accordance with the terms and conditions of the contract.
- 6.2 In the event of material defects, MAGMA initially provides warranty through subsequent performance. For this purpose, MAGMA shall provide the Customer with a new, defect-free version of the "Standard Software" or remedy the defect at its discretion; it shall also be deemed to be remedy of the defect if MAGMA provides the Customer with reasonable replacement solutions through the delivery of new software or workarounds, which avoid the effects of the defect if their use is reasonable for the Customer. In particular, MAGMA is entitled to modify the "Standard Software" for the purpose of subsequent improvement, provided that the performance features and operation of the "Standard Software" do not change for the Customer and no costs are associated with the modification.
- 6.3 If a number of attempts at subsequent performance appropriate to the severity of the defect fails and/or if such attempts have not been made within a reasonable period of time, the Customer shall be entitled to assert further warranty claims, in particular the reduction in remuneration, or to withdraw from the contract or to terminate it extraordinarily.
- 6.4 The Customer may not exercise any right to withdraw from the contract or to terminate it extraordinarily due to an insignificant defect which does not significantly restrict the usability of the functionality of the "Standard Software". For the payment of damages or reimbursement of expenses due to a defect, the limits set out in Section 9 shall apply. The obligation of MAGMA to unlimited liability in case of intent or gross negligence, in case of injury to life, limb or health, in case of violation of a guarantee as well as due to the product liability law remains unaffected by this.
- 6.5 The limitation period for all warranty claims is 12 months and begins with the "Delivery" of the "Software" in the case of the granting of permanent rights of use; in the case of the granting of temporary rights of use, the limitation period begins at the moment in which the Customer has become aware of the defect or should have become aware of it without gross negligence; the same period applies to other claims of any kind against MAGMA. This does not apply to claims for damages that are asserted as a result of a defect in the "Standard Software" that was caused intentionally or through gross negligence, fraudulent concealment of the defect, damages to life, limb and health, as well as damages that arise as a result of a breach of warranty promises. The statutory periods of limitation shall apply here, as shall claims under the Product Liability Act.
- 6.6 MAGMA provides the services within the scope of the warranty on working days from 8:00 a.m. to 5:00 p.m. The time zone of the contracting MAGMA branch or the contracting MAGMA partner applies. No warranty services shall be provided on public holidays at the Headquarters of the contracting MAGMA branch or contracting MAGMA partner.

- 6.7 Error correction is carried out by the responsible local MAGMA site, if separately agreed also at the installation location of the "Standard Software". If the defect is rectified on the Customer's system at the installation site, the Customer's computer system is to be made available to MAGMA free of charge during normal business hours. If the defect is rectified by MAGMA, the Customer is obliged to send the data carrier to MAGMA at his own expense and risk and will receive it back afterwards at the expense and risk of MAGMA.
- 6.8 If MAGMA can prove that there is no warranty claim for reported defects, the expenses for troubleshooting as well as for services provided by MAGMA according to section 6.2 shall be borne by the Customer.

7. Copyright and Property Right Infringements

- 7.1 MAGMA shall hold harmless the Customer against any legally determined payment obligations, which are caused by the violation of a copyright or intellectual property right by the software delivered by MAGMA. The prerequisite for this is that the Customer informs MAGMA in writing of all claims raised against him and the subsequent proceedings, grants MAGMA the authority to independently conduct and terminate the legal dispute, and supports MAGMA appropriately. The obligation of MAGMA shall cease if MAGMA did not know and did not have to know of this copyright or intellectual property right at the time of conclusion of the contract.
- 7.2 If copyrights or intellectual property rights are asserted by third parties, MAGMA has the right at its discretion to
- obtain the rights which allow the Customer to continue using the software,
 - replace the software or modify it in such a way that this copyright or intellectual property infringement no longer exists
- or
- if the above measures are not possible for MAGMA under economically reasonable conditions, to take back the software at the invoice price less an appropriate amount for a successful use.
- 7.3 MAGMA is not liable according to clause 7 if the Customer has caused the violation of the copyright or intellectual property right contrary to the contract.
- 7.4 MAGMA reserves the right to take action against violators of copyrights or intellectual property rights to the software. The Customer shall immediately inform MAGMA of such copyright or intellectual property infringements. He will support MAGMA appropriately in the action against infringers.

8. Default, Impossibility of Performance, Force Majeure

- 8.1 If MAGMA is prevented from fulfilling its obligations by the occurrence of unforeseeable, extraordinary circumstances that it cannot avert despite exercising reasonable care, e. g.
- operational disruption,
 - government intervention,
 - energy supply problems,
 - strike or lockout,

whether these circumstances occur in the area of MAGMA or in the area of its suppliers, the delivery period shall be extended to a reasonable extent, but by a maximum period of eight weeks, if the delivery or service does not become impossible. If a service is not possible even after expiration of the aforementioned period due to the same uninterrupted event of force majeure, this is considered impossible. If the delivery or service becomes impossible due to the above-mentioned circumstances, MAGMA shall be released from its performance obligations. The Customer's right to terminate the contract or to withdraw from the contract remains unaffected if, otherwise, unacceptable disadvantages arose.

9. Liability

- 9.1 MAGMA shall not be liable for damages (i) for lost profits or (ii) for consequences from the use of the software, namely data losses or damage that is due to the fact that the Customer cannot work productively with the "Standard Software", insofar as these damages are caused by the Customer's failure to back up the "Standard Software" and the data processed with it at reasonable intervals using current and reliable

state-of-the-art means. This does not apply if and to the extent that MAGMA has expressly assumed the obligation to back up the Customer's data itself.

- 9.2 The Customer remains obliged to check all results achieved by means of the "Standard Software" for their correctness, accuracy and completeness with engineering care. The use of the "Standard Software" does not release the Customer from his own professional duties of care. MAGMA is not liable for damages or in any other way, if due to defective testing by the Customer, his services are defective and the Customer is exposed to claims of his Customers.
- 9.3 The liability for claims for damages in general or the assertion of claims for reimbursement of expenses arising as a result of a defect in a product delivered by MAGMA or a service rendered by MAGMA shall be determined according to the amount individually agreed by the parties. If no such individual agreement exists between the parties to limit liability, MAGMA's liability for the claims mentioned in this paragraph shall be limited to the damage typically foreseeable at the time of "Conclusion of the Contract". The claims expire 12 months after the date of "Delivery". With regard to damages that result from injury to life, limb and/or health and/or the violation of a guarantee promise and/or that were caused by gross negligence or intent, the statutory provisions remain unaffected.
- 9.4 Liability for negligently caused damages asserted as a result of delayed performance shall be limited in amount to 15% of the value of the respective order. The statutory provisions shall remain unaffected with regard to damage resulting from injury to life, limb and/or health and/or the breach of a warranty promise and/or caused by gross negligence. The same applies to liability under the Product Liability Act.
- 9.5 The compatibility of the "Standard Software" with existing hardware and software configurations of the Customer is only warranted for the "System Environment" expressly mentioned in the respective quotation or contract. MAGMA assumes no liability for the compatibility of the "Standard Software" with other hardware or software configurations of the Customer or that were changed by the Customer after the order. Neither does MAGMA accept any liability for the compatibility of systems that may be put into operation by other suppliers at the same time as MAGMA's performance at the Customer's site. Deviations are to be agreed separately. If the Customer changes the "System Environment" required for the proper functioning of the "Standard Software" and/or hardware after installation or acceptance without the consent of MAGMA, the Customer bears the burden of proof that the damage was not caused by the change of the "System Environment". The same applies if the Customer has changed the "Standard Software" himself.

10. Confidentiality

- 10.1 The contractual relationship between the parties is based on mutual trust. The parties assure each other that during the term of this contract and two years thereafter they will treat all "Confidential Information" as trade secrets entrusted to them and will not pass it on to third parties or exploit it. This shall not apply as long as and to the extent that such information, documents and data
- were already known to the parties before without any obligation to maintain secrecy, or
 - are or become generally known without one of the parties being responsible for this, or
 - are lawfully told or provided to one of the by a third party that is not bound by a confidentiality obligation, or have been released for publication in writing by the disclosing company, or
 - must be disclosed in accordance with statutory or administrative provisions or by an incontestable judicial decision, if the disclosing party is immediately notified of this requirement and the scope of the disclosure is restricted as far as possible.
- 10.2 Both parties and the companies affiliated with them pursuant to § 15 AktG (German Stock Corporation Act) shall be obliged and shall oblige their employees to treat as confidential the business secrets of the respective contractual partner that have become known during the execution of this contract and, in particular, not to make documents accessible to third parties. The parties assure each other that "Confidential Information" will only be made available to their own employees and/or subcontractors for whom this knowledge is essential ("need-to-know basis").
- 10.3 Upon request, both parties shall irretrievably delete or return to the other party all "Confidential Information" upon termination of the cooperation. At the request of either party, the deletion shall be confirmed in writing. The confidentiality and data protection obligations under this Section shall survive termination of this contract or the complete performance of this contract.
- 10.4 These provisions apply in their entirety to all employees of MAGMA.
- 10.5 MAGMA must also ensure that all persons entrusted by MAGMA with the processing and fulfillment of the contract comply with the legal provisions on data protection. The confidentiality obligation required by data

protection law must be fulfilled prior to the first commencement of the employees' activities and must be proven to the Customer upon request. The same applies to employees of involved subcontractors.

- 10.6 If the Customer does not comply with an obligation specified in this regulation, MAGMA may demand a contractual penalty that is reasonable in amount. In individual cases, the contractual penalty shall be determined according to equitable discretion, taking into account the severity of the violation, the fault of the Customer as well as the damage incurred by MAGMA. This discretion is fully subject to judicial review. MAGMA reserves the right to assert claims for damages regardless of this.

11. Export Control

Notwithstanding the territorially limited right to use within the "Territory", the Customer must observe the applicable export control regulations at all times.

12. Maintenance of "Standard Software" (Subscription)

Services for the maintenance of the "Standard Software" (subscription) shall, in the case of granting permanent rights of use to the "Standard Software", only be rendered by MAGMA upon conclusion of a maintenance contract, in the case of granting temporary rights of use without further remuneration within the scope of the software rental. The services shall be rendered at the agreed remuneration rates exclusively for the programs and other components specified in the maintenance or rental agreement. The times specified in Section 6.6 also apply for maintenance.

12.1 Quality Assurance for Changes to the "Standard Software" or the "System Environment"

12.1.1 Any change to the "Standard Software" itself or to the "System Environment" may theoretically result in a malfunction of the "Standard Software". Therefore, in principle, every change must follow the pattern "data backup, data backup test, testing of the new software in the old system environment or testing of the old software in the changed system environment, go-live". The installation of new "Releases", "Patches" or "Hotfixes" or a change of the "System Environment", without these being tested as described beforehand, will be at the Customer's own risk or, in the event of a malfunction, at least justifies a considerable contributory fault on the part of the Customer.

12.1.2 Prior to any change within the meaning of this paragraph, the Customer shall back up all data and the "Standard Software". In addition, the Customer shall check at appropriate intervals whether the correct data is being backed up and whether the back-up of the data within a period of time accepted by the Customer permits productive working with the "Standard Software" and the data itself.

12.1.3 If new "Releases", "Patches" or "Hotfixes" are made available by MAGMA, the Customer shall check prior in a test environment or, if the Customer waives to do so, by going live on the productive system whether the "Standard Software" functions properly; clause 5 shall apply accordingly in this case.

12.2 Technical Requirements for Remote Maintenance

The prerequisite for remote maintenance (remote service) is access for MAGMA to the Customer's network. The technical details for this are agreed between the parties in individual contracts. If the Customer makes changes to the remote maintenance connections agreed upon in the individual contract without early written information to MAGMA, MAGMA's work to maintain the function/readiness for operation will be invoiced to the Customer according to MAGMA's valid remuneration rates. Furthermore, time delays and/or delayed error elimination measures due to failures of remote maintenance not caused by MAGMA shall be charged to the Customer. If the Customer does not provide any possibility for remote maintenance, MAGMA reserves the right to charge all additional expenses due to the absence of the data connection separately according to the usual rates. MAGMA can only schedule on-site assignments, which become necessary due to this fact, within the scope of the respective personnel availability. It is not possible to guarantee on-site response times.

12.3 Qualification of Users; Cooperation of the Customer in Maintenance Services

12.3.1 The prerequisite for the use of the services of the Maintenance and Support Agreement is a sufficient qualification of the users in accordance with the contractually agreed training courses or further training measures.

- 12.3.2 The Customer shall support MAGMA free of charge in all respects in the provision of maintenance services. The Customer undertakes to actively participate in the error analysis when faults occur and to precisely document faults in such a way that a reproduction of the fault is possible. This obligation is based on the Customer's ability to identify and name defects. An error message must contain information about the type of defect, the module in which the defect occurred, the patch number, and the work performed on the computer when the problem occurred. The error message must be in text form - if necessary, using the electronic forms provided by MAGMA.
- 12.3.3 The Customer shall provide MAGMA unhindered access to the premises and equipment for the performance of maintenance services without delay, keep the required technical equipment such as power supply, telephone connection and data transmission lines ready for operation, ensure the device-specific environmental conditions, in particular provide a competent contact person on site in order to ensure the rapid performance of the services to be rendered.
- 12.3.4 The Customer shall install the programs or program parts ("Hotfixes" / "Patches" / "Releases") received from MAGMA after further instructions and always comply with the suggestions for troubleshooting and error management provided by MAGMA. In particular, the user shall download enhanced "Standard Software" provided by MAGMA on data media or via its Internet pages (download service) and install it on his hardware system. The installation of the "Standard Software" provided by MAGMA takes place via installation routines or replacement of individual components by appropriately trained personnel of the Customer.
- 12.3.5 The Customer should confirm proper incident resolution and/or troubleshooting within 14 days via MAGMA Support or the MAGMA Customer Portal. If no confirmation is received from the Customer, MAGMA can mark the incident or the troubleshooting as resolved after 14 further days.
- 12.3.6 The Customer shall be responsible for properly maintaining the software and hardware environment of the "Standard Software". The Customer himself must ensure that the hardware is executable, ready for operation and meets the requirements. To the extent necessary for new "Releases" or "Patches" of the "Standard Software", the Customer shall, at his own expense, make timely adjustments to the hardware as well as operating system and/or database updates and make them available ready for operation. MAGMA will inform the Customer of such changes at an early stage. The supported operating systems and databases are documented in the currently valid system requirements, which are available via the Customer area on the MAGMA website.
- 12.4 Maintenance Services
- 12.4.1 Irrespective of any warranty claims of the Customer, MAGMA will remedy errors in the "Standard Software" reported by the Customer.
- 12.4.2 MAGMA will adapt the "Standard Software" in its current state, which results from the product description, to changing legal or technical standards within a reasonable period of time during the term of the contract. Adjustments of the interfaces, which become necessary within the scope of changes to the "Standard Software", are covered by the maintenance fees; configuration and setup of the interface are the responsibility of the Customer. The "Standard Software" will also be adapted to the usual patches of the required "System Environment". Independent adaptations to the operating system may only be made by the Customer after prior approval by MAGMA. Further adaptations to user requirements resulting from individual requirements of the Customer are not part of the service owed according to this provision, unless they are listed in the individual contract.
- 12.4.3 The Customer can reject the service if it does not have the same compatibility and functionality as the replaced program, i.e. to the disadvantage of the Customer it deviates considerably from the agreed target state of the product description, amended by corresponding release notes. The right of rejection shall also apply if the update to an offered "Release", "Patch" or "Hotfix" would be associated with unreasonable costs for the Customer which results directly from the modification of the software.
- 12.4.4 Adaptations to legal changes (the same applies to changes in case law), which the "Standard Software" must take into account, must be implemented within six months of the announcement of the legal change, including the times for installation and testing of the new software. If it is obvious to MAGMA that this deadline cannot be met because MAGMA does not have the necessary resources, MAGMA must inform the Customer two months after notification of the change of the legal regulation.

12.4.5 Adjustments to a changed technical system environment, which are necessary for the operation of the "Standard Software", are permanently made by MAGMA. Adjustments must be made here within reasonable periods of time. MAGMA is responsible solely for the compatibility to a system environment, which is either specified in the release notes or is reflected by the proven and reliable state of the art.

12.4.6 The "Standard Software" supplied by MAGMA has partially existed for several years. It is not possible to continuously develop and maintain all older "Releases". MAGMA only develops "Releases" (including the respective associated components) that are compatible with either the current or the last previous "Release" of the "Standard Software". If the Customer refuses to change to a more current "Release" and still wishes to continue using MAGMA maintenance services for this release, the services required to maintain the functionality of the software are no longer covered by the maintenance fee or the software rental fee, but must be agreed, ordered and paid for separately.

12.5 MAGMA Customer Support

12.5.1 Error or malfunction reports as well as other support requests can be made via the MAGMA ticket system on the Internet or by e-mail via the official MAGMA address. The error message can also be reported by telephone via the official MAGMA hotline. The hotline can be reached at the times specified in section 6.6.

12.5.2 Support in the sense of these regulations is any problem-related answer to the representation of a software technical problem of the Customer in connection with the "Standard Software". The maintenance services also include the clarification of content and organizational questions regarding the use of the "Standard Software". The scope of services does not include instruction in the functionality of the "Standard Software".

12.5.3 Each enquiry to Customer Service will be electronically documented and assigned with a unique processing number.

12.5.4 Before using the hotline, the Customer must try to solve the problem himself with reasonable care. In particular, he must refer to the "Documentation" and the help capabilities of the "Standard Software".

12.6 Other services; Services not included in the Rental/Maintenance Fee

At the request of the Customer, MAGMA will provide further services related to the "Standard Software", which are not included in the services according to clause 12, in return for a separately agreed remuneration. This applies in particular to:

- Work and services as well as travel costs and expenses of MAGMA on site at the Customer's premises
- All work and services that are performed at the request of the Customer outside the operating hours of MAGMA specified in section 6.6
- Work and services that become necessary due to improper operation of the "Standard Software" and/or breaches of obligations by the Customer, e.g. non-observance of the "Documentation", regardless of whether these were performed by the Customer, his agents, or other persons not authorized by MAGMA
- Work and services that become necessary due to force majeure or other circumstances for which MAGMA is not responsible
- Work and services that are necessary in connection with the installation of a "Hotfix" / "Patch" / "Release" provided to the Customer, instruction and training regarding these program versions
- Work and services resulting from changed or new usage requirements of the Customer
- Services for adapting the "Standard Software" to systems, devices or operating systems modified and/or new by the Customer
- Consulting and training services
- Adaptation of reports
- Parameterization of the "Standard Software" in order to achieve other behaviors or organizational processes of the "Standard Software";
- Delivery of new products that MAGMA has developed or distributes after the "Delivery" of the "Standard Software" and that are not part of the license
- Maintenance of programs or program parts that do not belong to the original version of the "Standard Software"

MAGMA is not obliged to provide services that are not subject of this contract, in particular the above-mentioned services. However, MAGMA will endeavor to support the Customer to the extent necessary for the reasonable economic use of the "Software" within the scope of operational possibilities.

- 12.7 If MAGMA can prove that no maintenance or warranty case has occurred in the case of reported errors or used maintenance services, the expenses for troubleshooting as well as the services of MAGMA for the error management shall be borne by the Customer.

13. Term of Contract, Termination

- 13.1 The commencement of the contract for the temporary granting of rights of use to "Standard Software" or the provision of maintenance services for the permanent granting of rights of use to "Standard Software" shall be governed by the agreement of the parties in the respective order.
- 13.2 The contract period for the provision of maintenance services is two years. After expiry of this period, the term shall be extended by a further year if the agreement is not terminated in writing by one of the parties three months prior to expiry of a contractual year.
- 13.3 If MAGMA has granted the Customer permanent usage rights to "Standard Software", these remain unaffected by a termination of the maintenance contract.
- 13.4 The right to extraordinary termination remains unaffected. If the Customer terminates the contract due to an important reason for which MAGMA is responsible, the Customer will be reimbursed a proportion of the remuneration already paid in advance for periods after the termination date.
- 13.5 For MAGMA, an important reason for extraordinary termination exists in particular in any case in which
- 13.5.1 the Customer is in default with payment of the agreed remuneration for two consecutive dates, or the Customer is in default with payment of the remuneration in an amount corresponding to the remuneration for two months in a period extending over more than two dates;
 - 13.5.2 the Customer is insolvent or insolvency proceedings have been opened against his assets, or the petition for the opening of insolvency proceedings has been rejected due to lack of assets; however, after the petition for the opening of insolvency proceedings against the assets of the Customer, MAGMA may not terminate the contract due to a delay in payment of the remuneration that occurred in the period prior to the petition for the opening of insolvency proceedings;
 - 13.5.3 the Customer violates essential contractual obligations, in particular exceeds the rights of use granted to him for the "Standard Software", and does not immediately remedy such a violation even after a warning.

14. Miscellaneous

- 14.1 The Customer may only assign rights and claims from this contract to third parties with the prior written consent of MAGMA; § 354a HGB remains unaffected. MAGMA is entitled to assign the contract as a whole or individual services to affiliated companies within the meaning of § 15 AktG (German Stock Corporation Act).
- 14.2 The laws of the Federal Republic of Germany shall apply with the exception of those provisions which refer to the applicability of another legal system.
- 14.3 If the Customer is a merchant within the meaning of the German Commercial Code, a legal entity under public law, or a special fund under public law, the place of jurisdiction for all disputes arising within the framework of this contractual relationship shall be the registered office of MAGMA. Irrespective of this, MAGMA is also entitled to take legal action at the court responsible for the Customer's place of business.