EAT Terms and Conditions for Services and Maintenance
Abroad
(TCSM-A)
Version: February 2023

I. Contracting Parties / Contract

1 Field of Application of TCSM-A

1.1 The terms and conditions set forth in this document (hereinafter: **TCSM-A**) shall govern any contractual and pre-contractual relationship between **EAT GmbH The DesignScope Company ("EAT")** and commercial or self-employed Customers (i.e. excluding consumers), covering the negotiations, the formation of and the agreements under a Contract comprising the provision of service and maintenance (including any auxiliary services) to **EAT-owned standard software** (hereinafter**: EAT Software Product**) that was licensed by EAT to Customer on a **perpetual** basis according to **EAT Terms and Conditions for the Provision of Software Abroad (EAT-LCA)** (hereinafter: **License Agreement**).

1.2 All references to "Sections" in this document mean the respective sections of these TCSM-A except for "LCA-Sections" which refer to the terms and conditions of the EAT-LCA forming part of the **License Agreement**.

2 Formation of Contract / Offer / Order confirmation

2.1 The written Offers and Order Confirmations of EAT in their latest version, including all terms for services and maintenance, prices and terms of payment and other individual agreements and the terms and conditions of EAT referred to therein, constitute the entire agreement between the parties (hereinafter: **Contract**). Deviating or additional terms and conditions of Customer shall not apply unless expressly confirmed by EAT in writing. In any case a binding contract between EAT and Customer as well as the granting of rights of use is subject to agreement on any and all stipulations, provisions, conditions and warranties (execution of Contract).
In particular, the provision of services and the provision of Updates and the acceptance of payments by EAT do not constitute an acceptance of such additional or deviating conditions.
Unless otherwise set forth, the term "Offer" used hereinbelow includes also the last Order Confirmation pertaining thereto.

2.2 The scope of EAT´s Service and Maintenance to be performed under the Service Contract is exclusively provided for in the respective written Offer or Order confirmation. It may include separately or collectively:

  a) updates of the EAT Software Product (hereinafter: Updates)
  b) service for the EAT Software Product (application consultation, troubleshooting, provision of a hotline)
  c) other agreed services

2.3   All agreements, including but not limited to changes or amendments to the Contract, collateral agreements and legally relevant statements by Customer and EAT each must be in writing.

2.4   EAT shall diligently provide a professional and state-of-the-art Service but shall not be obliged to achieve or warrant an outcome or result and to provide warranty for the Updates other than the limited warranties set forth in this document, unless EAT has assumed in writing an express and individual warranty for outcome or result of its work subject to a work contract. Sections III and IV below cover the liability for Services, and Sections II and IV below cover the liability for work.

II. Maintenance (Updates)

1 Subject matter of Maintenance/ Rights of Use / Intended Use of Updates
1.1 Subject matter of maintenance / Rights of Use
 During the term of the Service Contract, EAT shall provide Customer with one Update per Contract year of the EAT Software Products it has provided for use in object code in machine-readable form and grants Customer the rights of use as agreed in scope and duration for the EAT Software Product specified in the License Agreement (including EAT-LCA-Section 4). The source code is not included in the provision and no rights of use are granted to the source code.

1.2 Intended Use of Updates
EAT-LCA-Section 3.2 shall also apply with respect to the Intended Purpose of all Updates and **EAT only represents that the Updates comprise the functionalities designed and implemented by EAT as its market standard and is not customized to the specific needs of Customer and are not designed for particular purpose.**
 The term "Update" means all general improvements to the licensed software version released on the market by EAT, but do not include new versions (add-on features, enhancements on a different technological basis).

2 Due dates / Delivery of updates / Activation
2.1   No time or date pertaining to any of EAT´s service and maintenance, including without limitation dates for delivery and activation of Updates shall be a condition, of the essence or considered expiry dates. EAT shall be in delay only upon (i) Customer´s written request to perform within an adequate time and (ii) expiry of an additional period for performance to be set by Customer´s prior formal reminder. EAT shall deliver the Updates physically on data carriers or in electronic form at its discretion by making them available on the network and corresponding notification by EAT. The physical delivery shall be carried out in accordance with the then prevailing version of the INCOTERMS to the CIP address of Customer.
EAT shall notify the user ID (product key) to Customer within three working days from receipt of the relevant written request by Customer and receipt of the payment or partial payment due under the Service Contract at that time in EAT's bank account.

2.2 The notification of the user ID represents the time when the Update is activated and the commencement of Customer's Rights of Use.

2.3 The delivery date is:
   a) for data carriers, the dispatch to the freight forwarder,
   b) for electronic transmission, the date on which EAT makes the Update available for download in the network and notifies Customer accordingly
   c) for the user ID, the dispatch of the e-mail message by EAT

2.4 The installation is performed by Customer.

3 Limited Transferability of Updates and Rights of Use
Any transfer of Updates and the Rights of Use to them is prohibited unless expressly permitted in accordance with EAT-LCA-Section 6.

4 Limited Warranty for Quality of Updates and Liability
4.1 EAT warrants to Customer that the Updates when provided shall be free from Errors to the extent set forth in the License Agreement (see EAT-LCA Sections 9.1). The Updates usually comprise bug fixes and improvements to existing functions, but not necessarily any newly developed functions or functionalities on a changed technological basis.

 4.2 EAT is liable for Errors of the Updates to the extent described in the License Agreement (see EAT-LCA Sections 9.1.4, 9.1.5). If EAT fails to correct an Error in an Update at least two times or a correction is unreasonable for Customer, in particular because EAT rejects to correct the Error definitively, Customer may demand a refund of the payment made for the nonconforming Update against its return/deletion **Any further rights and claims of Customer in connection with Errors and failure to remedy Errors, including but not limited to rescission or repudiation of Contract and compensation for damages, shall be excluded subject to the exemptions set forth in Section III 8.2. of this document.**

4.3 **No warranty of EAT related to quality of Updates is to be understood as a condition, representation, guarantee or guaranteed feature or similar undertaking, unless it is designated as GUARANTY and expressly promised in writing by EAT´s executive board.**

III. Services

1 Troubleshooting
1.1 The initiation of troubleshooting by EAT within the reaction time is subject to Customer´s Error message including the following information:

   - The version of the EAT Software product used by Customer and all other software versions used in the network, including Updates, as well as the currently used hardware.
   - Confirmation that a check of the network did not reveal any defects
   - The module affected by the error
   - Description of the Error using a screenshot, logfiles or similar information

- The work steps during which the Error occurred/work steps that did not lead to error rectification
- The day and time the Error was detected
- Information on the reproducibility of the Error

1.2 The Error rectification to be provided under this Service

Contract does not affect Customer's claims under the warranty provisions of the License Agreement.

1.3 The objective of Error rectification is the re-establishment or maintenance of the functionality of the EAT Software Product as contemplated under License Agreement or any supplements thereto in connection with the agreed system environment and its use as intended .

1.4 EAT shall correct any defects in the EAT Software Product notified by Customer within a reasonable period in accordance with the following provisions. Reasonable period shall mean the period within which EAT is able to analyze and correct the reported errors without delay, taking into account its prevailing business backlog and the availability of its service staff.

1.5 EAT may, at its sole discretion, correct Errors in one of the following manners:

- Provision of software on data media or online, to be installed by Customer. This mean usually includes the provision of software components ("patches"), but may also include the provision of the complete software, in which case a new installation is required.
- Correction of Errors via remote access to Customer's systems, which allows the EAT Software Product to be modified or the settings to be changed.
- Proposals for workarounds or Error rectification.

1.6 EAT provides the services for the correction of Errors with due diligence customary within the industry. EAT does not guarantee that the Errors will be rectified at all or within a certain period and assumes no obligation to ensure a certain performance of the software after correction of the Error.

2 Support Services

EAT may require   Customer´s prior written notification explaining and documenting the problem, its alleged causes and the accompanying circumstances of the problem prior to the provision of the Support Service.

IV General Terms

The following terms and conditions apply to the provision of Updates (Maintenance) and any Services of EAT (hereinafter collectively: Deliveries and Services).

1 Confidentiality / Requirements on the part of Customer

1.1 Customer undertakes not to disclose the Updates, copies thereof and other deliverables including Service and Maintenance of EAT to third parties. Distribution, public access, sub-licenses, leasing and provision to third parties of any other kind are prohibited. These restrictions do not extend to the disclosure to employees of Customer, provided that (i) they need to know

the EAT Updates or other information of EAT for their work required to use the EAT Software Product as intended, in particular for the purpose of troubleshooting, and (ii) EAT unlawfully rejects to provide such information.

1.2 The provision of Deliveries and Services is conditional upon Customer´s compliance with and observance of all provisions under the License Agreement and the Service Contract governing Confidentiality, the Right of Use to the EAT Software Products and the Updates including all restrictions, limitations and obligations pertaining thereto.

2 Prices / Payment

2.1 All prices are fixed prices that apply over the of the entire duration of Contract performance. Payment of the prices is made effective in the currency stated in the Contract without deductions. All price indications of EAT refer to net prices. Any customs duties, fees, sales, value-added or other similar taxes and other public charges incurred by EAT for their service, maintenance, deliveries and licensing are not included in the net prices and shall be borne by Customer in addition thereto (except for taxes based on EAT´s income).

2.2 Payments shall only be deemed received when its entry is booked in EAT's bank account without reservation.

3 Cooperative Undertakings of Customer

Customer undertakes to cooperate with EAT by providing:
   a) Production and maintenance of a system that is suitable for the EAT Software Product in the prevailing version (updates, new versions) provided by EAT
   b) Installation including setting up of the EAT Software Product and including a comprehensive test run to verify all necessary functionalities, especially in case of data exchange with Customer´s systems and machines prior to the start of productive use.
   c) Granting remote data access to the EAT Software Product and the system to EAT, in particular for error detection and troubleshooting purposes.
   d) Availability of qualified personnel for training and other communication related to the scope of software support by EAT, including documentation and diagnosis of malfunctions
   e) Maintaining and securing a backup of the EAT Software Product during its use against harmful external attacks (viruses etc.) and backup of its programs and data (regularly and before service calls of EAT) against data loss and data manipulation.

4 Customer's obligation to examine and notify

Customer shall examine all Deliveries and Services, including any modified or supplemented documentation upon their provision without delay, in particular with regard to the completeness and functionality of fundamental program functions of Updates and notify EAT in writing and without delay of any complaints as detailed as reasonably possible.

5 Liability for Quality of Services /Delay of Services

5.1 Services pursuant to Section III above and all other ancillary and additional Services only include the obligation to provide a diligent professional and state-of-the-art service, but not any

warranty and other obligation for outcome or a result. In the case of non-conforming services, EAT shall only and exclusively be liable to the following extent: If EAT fails to perform Service, is in delay in its performance or fails to performing accordance with such quality standard, prior to recurring to any other remedy Customer shall grant EAT the opportunity to cure such failure within a reasonable additional period. EAT is entitled to two attempts each to cure a nonconforming or delayed Service. If the repeated cure of nonconforming Service fails for reasons attributable to EAT, Customer may claim a reduction of its payment obligation related to the affected Service to compensate for the reduced value of the nonconforming part of the Service. Customer may terminate for good cause nonconforming or delayed Services subject to the applicable statutory law rules on such remedy only, if either

(i) EAT continues delay of Service after expiry of the second period to cure or has not remedied nonconforming Services after expiry of the second period to reperform

or

(ii) EAT unlawfully refuses to cure or reperform Services or in case such cure or reperformance shall become impossible due to the fault of EAT.

5.2 EAT shall be in delay in the performance of Service only upon (i) Customer´s written request to perform within an adequate time and (ii) expiry of an additional period for performance to be set by Customer´s prior formal reminder.

Any further rights and claims of Customer in connection with nonconforming, delayed or unperformed Service, in particular any claim for rescission of Contract or price reduction and compensation for damages, shall be excluded subject to the exemptions set forth in Section IV, 8.2 of this document.

6 Warranty to Title and Liability for Defective Title
6.1 Scope of warranty
EAT warrants to Customer that the Updates, if used in accordance with the Contract, do not infringe intellectual property rights, exclusive rights of use and copyrights in effect at the date of execution of the Contract (hereinafter referred to as "industrial property rights") of third parties (herein: Defective Title). EAT shall however not be liable for any infringement of rights (i) if the program of the Updates is based on Customer´s specification, (ii) the Updates are not used in accordance with the Contract, or (iii) if the infringement results from a combination of the Updates with hardware or software not supplied by EAT.

6.2 Liability
In the event of Defective Title in terms of Section IV, 6.1 above, EAT shall defend Customer against all claims based on an infringement of industrial property rights by EAT and indemnify Customer from damages awarded to Customer by the court, provided that Customer immediately notifies EAT of the alleged infringement of industrial property rights and assigns all settlement negotiations and defensive measures to EAT. In the event of Defective Title EAT may, at its discretion and prior to any other relief by Customer, grant Customer the right to use the Updates or modify the Updates to make them free from industrial property rights of third parties, provided that the modified product will substantially perform according to the Contract or EAT has the discretionary right to take back the infringing Update. Customer is entitled to return the

infringing Update, if EAT does not procure the right of use within a reasonable period or does not modify the Updates as described above. In either event and unless EAT has provided a subsequent conforming version of the Update, Customer may solely and exclusively demand reimbursement of the license fee pertaining to the infringing Update less benefit derived by Customer from the use of the Updates in the interim in exchange for the return of the infringing Update in consideration of the license fee.

Any further rights and claims of Customer in connection with Defective Title and failed subsequent improvement, in particular the claim for rescission of Contract or price reduction and compensation for damages, shall be excluded subject to the exemptions set forth in Section IV, 8.2 of this document.

7 Limitation period for Claims

All claims of Customer, regardless of their legal grounds, including liability for the breach of auxiliary and ancillary obligations, shall become statute-barred after 12 months starting on the date provided by the applicable law for such limitation. Any cure of breach of an obligation, condition or warranty including search or admission of Errors by EAT, as well as payments made by EAT or payment deferrals and payment waivers granted by EAT, shall not cause suspension or renewal of the Limitation Period.

8   Limitations of liability

8.1 Disclaimer: EAT´s liability for any of its breach related to the Contract, including any obligation, condition, warranty, representation or other duty and for all non-contractual claims of Customer against EAT – regardless of the legal basis on which they are asserted – is exclusively set forth in the terms and conditions of the EAT-LCA and shall be in substitution of all remedies provided by law, including without limitation claims for price reduction, rescission, annulment or any other termination of the Contract, or compensation for damages and compensation for expenses. In no event shall EAT be liable for any damages whether of direct, indirect, consequential, accidental or otherwise nature including without limitation damages for loss of profit, lost production, loss of data or any other commercial damage (and notwithstanding the failure of essential purpose of any compensation or damage that could not reasonably be expected while entering into the Contract).

8.2 Limited Exemption from Disclaimer: This disclaimer shall not apply**:**
   a) in the event of unlawful intent or gross negligence on the part of EAT.
   b) In the event of any intentional or negligent bodily injury or death,
   c) in the event and to the extent EAT is held liable for bodily injury, death or property damage under statutory strict liability law
   d) in the event of EAT´s breach of an express obligation or guarantee which may only be assumed by EAT in accordance with Section II, 4.3. in this document that exceeds the warranties for quality set out in Section II, 4.1 in this document

Notwithstanding the above exemptions, EAT disclaims any liability for acts and omissions of its agents (within the definition of Art 101 of Swiss Code of Obligations) including their unlawful intent and gross negligence.

8.3 Notwithstanding the exemption from relief set forth in Section IV, 8.2, EAT´s liability for the recovery of data is limited to the necessary costs incurred by Customer of such recovery that could not be avoided by Customer´s reasonable precautionary measures for storing and recon-structing data from machine-readable data material.

8.4 The provisions including warranties under the License Agreement and the Service Contract each are independent from each other. Any termination of the Service Contract by expiry of its term, rescission, or any other termination by either party for whatever reasons shall not affect the effectiveness of the License Agreement. If the License Agreement terminates by expiration of its term, rescission or termination for any reason, the Service Contract shall be deemed to have been terminated at the time of the termination notice.

9 Return in the case of Termination
If the Contract terminates whether for the total of all performed and unperformed provisions or the unperformed provisions only by termination notice, rescission, withdrawal or by expiry of its term, Customer at its sole costs must uninstall the Updates and return the data carriers received from EAT and all copies made thereof, or destroy them permanently and completely and con-firm the same to EAT in writing upon request.

10 Exclusion of offsetting and waiver of retention
Customer may only offset claims of EAT against its own claims that are undisputed, ready for de-cision, or claims finally awarded by court. Customer expressly waives retention right to the con-tractual items provided to it by EAT.

11 Written form
All reminders, settings of deadlines, Notices of Error, and termination notices and rescission no-tices of Customer are only valid or may be relied on if made in writing.

12 Exclusive Place of Jurisdiction / Applicable Law
12.1 Any legal dispute arising from or in connection with the contractual or pre-contractual rela-tions between EAT and Customer (including but not limited to disputes concerning the validity and dissolution of the Contract and the validity of this Sections providing for the place of juris-diction and choice of law clause) are to be settled **exclusively** by the courts with jurisdiction at the registered main office of EAT (Krefeld, Germany).

12.2 Swiss substantive law shall apply to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (C.I.S.G) and the conflict of law rules (Swiss "IPRG").

13 Severability
 In the event any term of the Contract, in particular the terms and conditions of the EAT-LCA, are found to be or to become invalid or ineffective, the remaining terms and conditions of the Contract shall remain effective and such invalid or ineffective term shall be replaced with such effective term as comes closest to the economic purpose and intent of the invalid or ineffective term.