

## GENERAL TERMS AND CONDITIONS OF CYTRUS PLC

### FOR THE PURCHASE/TRANSFER OF USER SYSTEM SOFTWARE AND SOFTWARE MAINTENANCE, SERVICES AND HOTLINE

As at 04/2021

#### A. SCOPE

Our general terms and conditions ("General Terms and Conditions") apply to all contracts we conclude with a customer for application software (standard software, customised standard software and individual software), for consulting and training services, software servicing and maintenance, as well as hotline services in connection with the use of user software, including future contracts governing these areas within the scope of the current business relationship. If the customer also uses its own general terms and conditions, the contract is concluded even without express agreement on the inclusion of the general terms and conditions. Where the content of the different general terms and conditions agree, they are deemed to have been agreed. Where individual provisions are in conflict, the statutory provisions apply. The same applies where the customer's terms and conditions contain provisions that are not included in these General Terms and Conditions. If these General Terms and Conditions contain provisions that are not included in the customer's terms and conditions, the provisions of these General Terms and Conditions apply. Any terms and conditions of the customer that deviate from this provision on the inclusion of the General Terms and Conditions do not apply.

#### B. GENERAL

##### I. Subject of the contract

(1) Cytrus and the customer have the following rights and obligations under these General Terms and Conditions for the application programs listed in the accompanying maintenance certificate (hereinafter the "Programs"). The Programs are standard application programs that were developed by third parties not involved in this contract (hereinafter the "Manufacturers"), rather than by Cytrus. These Manufacturers also create new Program versions (new editions and releases). Cytrus will make the new Program versions within the scope of this contract available when they are released for distribution by the Manufacturers.

(2) The services to be provided by Cytrus comprise:

- provision of the latest software releases (section II)
- error correction (section III)
- service hotline (section IV)

(3) The Manufacturers develop measures to improve their software's structural organisation and program flow at their own discretion.

(4) Under this contract, Cytrus is only required to provide services for the last two versions released by the respective Manufacturer. If the customer's version of the software is out of date due to the suspension of software upgrades or becomes out of date during the contract period, Cytrus is not obliged to provide the services regulated herein until the version is updated by the customer. Up until that point, the services set out in clause 5 (2) must be ordered and paid for separately. The customer's obligations under this contract are unaffected even if the version is out of date.

(5) Customer's obligations:

- The customer will provide Cytrus with the names of qualified contacts (key users), who will be available to field queries on how the software is to be used within the customer's company and who are authorised to take the decisions needed to perform the contract.
- The customer will grant Cytrus on-site access to its own premises during its regular business hours and to the necessary extent, and also to the hardware and software required to provide the services, including the required technical equipment. This also includes giving Cytrus the option of remotely accessing the hardware and software required to provide the services.

- If the respective service has to be urgently provided, the customer will also grant access/remote access outside its regular business hours. Cytrus will ensure that the disruption to the customer's business operations from Cytrus's on-site activities is kept to a minimum.
- The customer is responsible for the security measures needed to protect stored Programs and data from being destroyed. The customer will make all reasonable efforts to ensure that no unauthorised copies of software or related documentation can be made. Documents may be copied for personal use under the supervision of the internal specialist unit. Cytrus assumes that the customer can prove it has a valid licence for the software, including a valid licence agreement, both issued by the official Manufacturer's representative for the country in which the software is used, and that hardware and software have been imported in accordance with the US and Swiss import and/or export regulations.

## II. Provision of the latest software release

The latest software release is made available via electronic download from a website specified by the Manufacturer after the Manufacturer has approved it. Physical delivery of the media is made at the Manufacturer's option, either to accommodate the customer or because certain software components are not available for electronic download.

If Cytrus is to carry out the installation, Cytrus must be ordered separately to do this and remunerated according to the agreed service rate.

## III. Error corrections

- (1) Cytrus will remedy defects in the software that arise during the term of this contract under the following conditions.
  - The customer notifies Cytrus of the fault it has detected via [hotline@cytrus.com](mailto:hotline@cytrus.com). The message, which must be described, serves as the basis for preparing the error correction. If the customer is

unable to notify Cytrus using this channel because of the fault, it may also report the fault to Cytrus by other means.

- The error is a deviation from the published software specifications.
  - The error can be reproduced on the customer's Manufacturer-approved hardware and appears in the latest software release.
  - The error hinders the customer from carrying out essential tasks.
  - The customer provides Cytrus with all documents and information needed for the error correction.
  - If self-testing facilities are provided in products, the customer must carry out the prescribed tests before reporting a fault.
- (2) Defects within the meaning of this contract mean deviations of the software (actual state) from the respectively separately agreed service descriptions (service specifications, software specifications or similar) of the respective Manufacturer of the software (target state). The relevant actual state for assessing the existence of a defect is the state after installing the latest release of the software. Only the last two main releases released by the Manufacturer are relevant in this regard.
  - (3) Software that the customer has modified independently or has had modified by third parties is not covered by the error correction obligation under this contract, unless the customer demonstrates that the defect also exists in the software that was originally supplied.
  - (4) If several defects are simultaneously present, the customer may determine the order of priority in which Cytrus is to eliminate such defects.
  - (5) Cytrus may, at its own discretion, correct errors using remote maintenance or remote diagnosis.

#### IV. Service hotline

Cytrus offers the customer the use of the support hotline during business hours (from Monday to Friday, from 8:00 a.m. to noon. and from 1:00 p.m. to 5:00 p.m.), except for public holidays in Switzerland.

The hotline numbers are: 044 905 65 99 / 026 460 79 99

#### V. Remuneration and payment terms

- (1) The remuneration for Cytrus's services is set out in the accompanying maintenance certificate. The fee for software maintenance plus VAT must be paid annually in advance.
  - (2) The maintenance fees may be adjusted in accordance with the officially published inflation index, subject to three months' notice.
  - (3) If the contract begins during the year, the annual flat fees for the first calendar year are reduced by 1/12 for each complete preceding calendar month.
  - (4) Besides the maintenance fee, Cytrus (or the Manufacturer, if applicable) will invoice separately at the rates applicable at the time for:
    - a) services not referred to in section III;
    - b) work to translate the software modules;
    - c) data carriers additionally supplied by Cytrus or the Manufacturer, such as software updates (excluding the software releases);
    - d) support services for transferring an application developed by the customer from one operating system to another;
    - e) support services at the customer's premises, unless an additional agreement on training and support services has been concluded;
    - f) the analysis and elimination of faults that have occurred due to improper handling, errors operating the software or other circumstances for which the Manufacturer or Cytrus is not responsible;
    - g) compensation for delays if on-site support work has to be interrupted for reasons which the customer is responsible for and/or if the work cannot be carried out at the agreed time and date;
  - (h) resolving problems related to third-party products, where such products are not covered by the maintenance contract
- The here aforementioned fees are due net 10 days from the date of the invoice.
- (5) If the customer is more than one month in arrears with the payment of the annual flat fees, this contract will continue to run, but Cytrus will not be required to provide any further services until the due payment has been made in full.
  - (6) If, after the error was reported, Cytrus determines that there was no defect within the scope of this contract, Cytrus may invoice the customer the expenses incurred as a result of the unsubstantiated error notification as a special service in accordance with the agreed services price list. The amount is due 10 days after proper and verifiable invoicing.

#### VI. Warranty for defects in quality and title

- (1) We warrant that for a period of 90 days from the date on which the software is first made available to the customer under an individual contract ("warranty period") that the software has the key features and functions described in the documentation. The aforementioned warranty excludes software provided after a remix and also error corrections, new versions of the same product, and other forms of provision that are subject to the terms and conditions for servicing. Cytrus's total liability and the customer's exclusive remedy during the warranty period will be, at Cytrus's option, error correction or a workaround, replacement of defective media, or a refund of licence fees for defective software returned by the customer.
- (2) Cytrus makes no warranty of any kind, except for the warranties expressly limited in this contract. Descriptions of the products, features and servicing services in communications with the customer are technical information and no warranty or guarantee is provided. Cytrus excludes all other warranties, including the implied warranties of standard commercial practice and fitness for a particular purpose. Cytrus does not warrant that the products will run free from interruptions or errors.

## VII. Liability

- (1) Cytrus and the Manufacturer are liable within the scope of the statutory provisions for direct damage where it has been demonstrated culpability was involved, regardless of the legal grounds, up to a maximum of 10% of the annual maintenance fee per loss event. Cytrus and the Manufacturer are also only liable if damage is caused by intent or gross negligence.
- (2) Any other liability, including for indirect or consequential damage, data loss, additional expenditure or claims of third parties, lost profits or unrealised savings, and for damage arising from delayed delivery or performance, is excluded to the extent permitted by law, regardless of their legal nature. Neither Cytrus nor the Manufacturer are liable for damage caused by accidents, force majeure or third parties or outside the contract.
- (3) The limitations of liability also apply to agents (especially employees). Any direct liability of the agents is excluded to the extent legally possible.
- (4) Other contractual or tortious claims are excluded.
- (5) Where our liability is excluded or limited, the same applies to the personal liability of our employees, workers, staff, representatives and vicarious agents.

## VIII. Confidentiality

- (1) During and beyond the term of the contract, the parties will take precautions to ensure that confidential information they become aware of in connection with the services provided is treated confidentially, protected from being accessed by third parties, not made the subject of their own property right applications and also not made available to third parties in a modified form, either in whole or in part. Confidential information includes in particular work results and other information of a technical and economic nature, intentions, experiences, knowledge, designs and other corresponding documents or files.
- (2) The foregoing confidentiality obligation does not apply if the customer or Cytrus is legally obliged to disclose confidential information in judicial, official or other proceedings.

## IX. Contract term and termination

- (1) The contract is concluded for an indefinite period. It can be terminated for the first time after 12 months with a three-month notice period to the end of the calendar year.
  - The right of both parties to termination without notice for cause is unaffected.

Cause for Cytrus is deemed to arise in particular if:

- the customer is in serious breach of the contract (e.g. in violation of confidentiality rules); or
- the customer has the software or parts thereof maintained in parallel elsewhere; or
- the software or parts thereof are transferred by the customer to third parties
- the measures taken in the event of a written reminder for late payment have been unsuccessful or no agreement has been reached regarding security;
- this is required by the Manufacturer for specific reasons (if the above points do not apply, the Manufacturer or a certified partner designated by the Manufacturer will in this case provide the maintenance for the customer)

Cause for either party is deemed to arise in particular if

- insolvency proceedings are opened against the other party or the opening of such proceedings is refused for lack of assets

- (2) Any termination must be made in writing. Email is not sufficient.
- (3) Changes in the scope of the products to be maintained will be notified to the customer by supplying a new maintenance list or in the form of the invoice. The minimum period during which a new product can be included in this maintenance agreement is 12 months, unless otherwise agreed.

The content of the maintenance is deemed to have been found correct by the customer if the customer has not notified Cytrus in writing of any objections within 14 days of receipt of the maintenance certificate or the corresponding invoice.

**X. Miscellaneous and final provision**

- (1) This contract includes all agreements concerning the maintenance of the software specified in the maintenance list. It replaces all previous agreements. Deviating agreements and arrangements must be made in writing to be legally effective; this clause can only be waived in writing. Additions and amendments must be expressly noted as such and signed by both parties.
- (2) The annexes are an integral part of the contract. If the provisions of the contract and those of the annexes are in conflict, those of the contract will prevail.
- (3) Cytrus may not transfer rights and obligations arising from this contract concerning software from the Manufacturer to third parties, unless the Manufacturer permits or orders this. Cytrus remains responsible for the work results already achieved.
- (4) Cytrus may transfer rights and obligations under this contract to the Manufacturer or to a third party designated by the Manufacturer at any time without the customer's consent being required for this purpose
- (5) If individual provisions of this contract are ineffective, the ineffective provision shall be replaced by an effective provision that comes as close as possible to the commercial intention.
- (6) The scope of this contract is limited to Switzerland and the Principality of Liechtenstein.
- (7) In the event of a dispute, both parties undertake to seek to reach an amicable settlement before resorting to the courts, and to at least give the other party a sufficient opportunity to submit a written opinion.
- (8) This contract is subject to Swiss law. The Vienna Sales Convention is excluded.