

# General Maintenance Conditions for Systems of PROTEC GmbH & Co. KG

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## 1 Object and Scope of Maintenance

- 1.1 Object of the maintenance services is the system (consisting of hardware and/or software) provided to the customer by Protec by means of purchase, software leasing or the Lease & Click model. The exact designation of the system and system components in respect of which maintenance services including possible technical online-support are provided according to these *General Maintenance Conditions for Protec Systems* is set forth in the respective agreement or Protec's confirmation of the order.
- 1.2 Maintenance of the system is carried out by the Protec system support, which includes the following services as specified in the respective applicable support services description:
  - hotline service (no. 2),
  - support service (no. 3),
  - update service and upgrade service (no. 4).
- 1.3 These *General Maintenance Conditions for Protec Systems* shall equally apply to all later versions of the Protec software either included in the system or delivered separately that are supplied to the customer within the framework of the update service pursuant to no. 4.1 below, unless otherwise agreed at the delivery of the respective later version.
- 1.4 These *General Maintenance Conditions for Protec Systems* apply exclusively in relation to Protec dealers, not in relation to final customers. In the absence of a special agreement in the particular case, Protec renders no maintenance services directly to final customers. The customer (dealer) is not authorized to enter into maintenance agreements with final customers on behalf and in the name of Protec.

## 2 Hotline Service

- 2.1 Within the framework of the hotline service, trained staff members of Protec will be at the disposal of the customer to answer questions arising in connection with the agreed use of the program, especially questions concerning the operation and possible applications of the system (Helpdesk).

- 2.2 The hotline service is further available to the customer for the receipt of failure notifications. A failure is deemed to exist if the system fails to perform the functions specified in the instructions for use, if it furnishes incorrect results, interrupts its run in an uncontrolled manner, or otherwise fails to work in accordance with its functions so that the agreed use of the system is significantly impaired. To the extent possible, the hotline service will remedy such failures by pointing out to the customer a simple bypass solution. In all other cases, the failure notification will be promptly transmitted to the support service (see no. 3).
- 2.3 Except during company holidays of Protec, the hotline service is available to the customer on workdays (Monday through Friday, not including public holidays at the statutory seat of Protec and bridge days if public holidays fall on a Tuesday or Thursday), Monday through Thursday from 8:00 hours to 17:00 hours and Friday from 8:00 hours 15:00 hours, and can be reached as follows:
- by telephone at 07062-925517 / -925537 / -925542 or -925577
  - by fax at 07062-9255-60
  - by email at [service@protec-med.com](mailto:service@protec-med.com)

If all phone lines of the hotline service should be occupied, you will automatically be forwarded to our telephone switchboard (Customer Service), to register your call-back request by our technical service and support department contacting you as soon as possible.

### **3 Support Service**

- 3.1 Within the framework of the support service, failures occurring during the customer's proper use of the system that cannot be remedied immediately by the hotline service will be handled upon notification by the hotline service (Second Level Support). To ensure a target-oriented realization of support service, please consider:
- For planned services: customer (distributor) will inform PROTEC's service and support team (see phone numbers in 2.1) at least 2 days before about the case and related required technical online-service by Protec. Doing so, the distributor will receive a reference number by Protec and mutual appointment (day/time) agreement will be set.
  - For unscheduled services, the distributor will contact Protec without prior notice and Protec offers second level support according to its available time slots at moment of call receipt.

- 3.2 In the context of the support service, Protec will endeavor to narrow down the source of the failure, to diagnose the failure and to remove it or, if the failure cannot be remedied at a reasonable cost, to place the system into operating state by pointing out a bypass solution.
- 3.3 Measures within the framework of the support service will be taken through remote maintenance by telephone, email or via remote access, during the periods of time set forth under no. 2.3. Measures outside these periods of time or measures to be carried out at the customer's place of business (save failures of the priority level P1, if necessary, in the opinion of Protec) will be taken solely based on a separate agreement in the particular case and solely subject to payment of additional fees at Protec's hourly rates, as applicable from time to time.
- 3.4 For the handling of failures, the staff members of the support service will classify all failures reported to them by the hotline service according to the following priority levels:
- **Priority P1: Prevention of Operations**

A prevention of operations is deemed to exist if the use of the system due to malfunction, incorrect works results or the exceeding of response times is impossible not only temporarily, or is restricted to such a degree that material functions can no longer be executed,
  - **Priority Normal P2: Disturbance of Operations**

A disturbance of operations is deemed to exist if due to malfunction, incorrect works results or the exceeding of response times material functions are considerably impaired even though the use of the system is not impossible or seriously limited.
  - **Priority P3: Other Failures**

Other failures are deemed to exist if the system's use is not materially affected, in particular, if no material functions are impaired.
- 3.5 For the support service, Protec offers the following response times during the hotline hours according to no. 2.3, in each case counted from the point in time the detailed failure notification (see no. 6.1) is received by the hotline service (Call Receipt):
- **Priority P1:**
    - Response time 6 working hours in the event of a Call Receipt by telephone.

- Response time 8 working hours in the event of a Call Receipt by E-Mail or fax.
- **Priority P2:**
  - Response time 8 working hours in the event of a Call Receipt by telephone.
  - Response time 12 working hours in the event of a Call Receipt by E-Mail or fax
- **Priority P3:**
  - Response time 16 working hours in the event of a Call Receipt by telephone, E-Mail or fax.

Response time means the time it takes for a qualified staff member of the Support Service Center to actively attend to the reported failure by contacting the technician (distributor) for online appointment arrangement and/or to initiate the handling of the failure either by telephone, email, or remote access or, if necessary in the opinion of Protec in the context of reported failures of the priority level P 1, by carrying out support services at the customer's place of business.

3.6 If a notified failure of the priority level P 1 cannot be removed within 8 working hours (during the hotline hours pursuant to no. 2.3 above) from the beginning of the handling of the Call, an escalation process will automatically be initiated. Protec will give the customer the name of a responsible staff member, who will be in charge of handling the failure and who will coordinate all measures required internally or externally. These measures comprise, for example:

- Discussion of proceeding / definition of an action plan jointly with the customer; incl. appointment definition at which the distributor will be onsite at the product; incl. definition which tools and equipment must be available by the distributor's technician onsite for the planned action; incl. definition of required technical documentation to be available onsite; incl. definition of further technical requirements for realization of online support.
- Informing Protec's management
- Making inquiries with the development department of Protec

The designated staff member will be the personal contact person of the customer and will keep the customer informed of all activities. After the removal of the failure, the entire system will continue to be observed for a certain period. During this phase, the designated staff member will continue to be at the customer's disposal for assistance and advice within the scope of previously define action

plan. In case of temporary replacement for designated staff member, another qualified member of Protec's technical service team will provide the required service instead.

#### **4 Update Service and Upgrade Service**

- 4.1 Within the framework of the update service, the customer will be provided with new service releases (updates = change of the version number in the second position e.g. from 1.1.5 to 1.2.0) of the software modules provided to the customer together with the system and with the related instructions for use for downloading via the internet or on machine-readable data storage media in object-code format for installation by the customer on the system or on a separate work station that is connected to the system.
- 4.2 The update service does not cover extensions of the software, which Protec offers separately as new modules, or major releases (upgrades = change of the version number in the second position e.g., from 1.1.5 to 1.2.0) of the software. The customer can additionally acquire licenses for the use of such new modules or upgrades at Protec's list prices, as applicable from time to time.
- 4.3 Notwithstanding no. 4.2, in the case of the provision of software by means of software leasing and Lease & Click, the upgrade service that is the provision of major releases of the software is included up to the end of the contract. The provisions of no. 4.1 apply accordingly.
- 4.4 With regard to the rights to use the new program versions supplied to the customer within the framework of the update or upgrade service, the *General Software License Conditions* of Protec shall apply. Protec's warranty and liability for the new program versions shall be governed by the *General Terms and Conditions for the Supply of Goods and Services* of Protec.

#### **5 Delimitation: Not included Services**

- 5.1 An obligation to provide maintenance services according to these *General Maintenance Conditions for Protec Systems* does not exist.
  - outside the hotline services and support service hours stipulated under no. 2.3;
  - for problems of the system due to the Protec software included in the system, or acquired in addition, being used contrary to the provisions set forth in its product or program descriptions, its instruction for use, the *General Software License Conditions* of Protec or any other product documentation;

- for problems of the system, which are based on the fact that failures have arisen due to the non-use or improper use of the Technical Description;
- for problems of the system due to the system, or the Protec software included in the system, or acquired in addition, being modified by the customer or a third party without prior written consent from Protec;
- with regard to failures of the system that have been caused by faulty installation or application on the part of the customer or its final customer and that could have been prevented if the instructions for use of Protec had been thoroughly consulted;
- with regard to failures of the system that are due to viruses or other external impacts for which Protec is not responsible;
- with regard to failures of the system that are due to the customer failing to install update onto the system despite Protec's explicit advice regarding an obligatory update;
- with regard to failures of the system that are due to defects of hardware not supplied by Protec, defects of the operating system, or defects of other Protec computer programs to which the system is connected via interfaces or in any other manner;
- with regards to failures of the system that are due to installation or maintenance having been done by non-factory trained or insufficiently trained technicians or by technicians which are not part of the distributor company organization (basis: comprehensive special technical trainings at Protec).
- for problems of the system due to the fact that maintenance and safety inspections were not performed at regular intervals as specified in the Technical Description
- with regard to failures of the system that are due to its operation through inadequately or insufficiently specialist personnel;
- with regard to failures of the system that are due to its use/operation outside the intended use;
- with regard to failures of the system that are due to its use beyond/after its defined product life cycle;
- with regards to failures of the system arising from improper treatment or use, which is the case in particular in case of a willfully impaired function;

- with regard to the restoration of data which, contrary to the provisions of no. 6.4 below, the customer or its final customer has not sufficiently secured against loss.

In the preceding cases, Protec will provide appropriate support services at the customer's request subject to payment of additional fees based on Protec's hourly rates, as applicable from time to time, provided that Protec is – both technically and in terms of personnel – in a position to provide such services.

- 5.2 Furthermore, the scope of maintenance does neither include the installation of the system and of any new program versions that are supplied in the context of the update service under no. 4.1 or of the upgrade service under no. 4.3, nor the performance of release changes or the provision of programming services that are necessary for adjustment purposes. At the customer's request, Protec will provide such services based on the *General Terms and Conditions for the Supply of Goods and Services* by Protec and subject to payment of additional fees.
- 5.3 The customer shall inform Protec of its own accord of changes, if any, in the place of installation of the system. Additional expenses incurred by Protec within the framework of the provision of the maintenance services as a consequence of the change in the place of installation shall be borne by the customer.

## **6 Customer's Cooperation Duties**

- 6.1 When notifying the hotline service of failures, the customer shall furnish all available failure reports, system logs, log files, interim and test results, as well as any other documentation and information – including version and series numbers of the software used – necessary for analyzing and handling the failure. The failure must be described in a manner allowing the failure to be reproduced. If Protec makes a failure analysis at the request of the customer and the analysis shows that no failure, which Protec according to these *General Maintenance Conditions* is obligated to remove exists, Protec may invoice the customer for the expenses incurred based on the hourly rates, as applicable from time to time.
- 6.2 For the provision of the maintenance services, especially within the framework of the support service, the customer shall grant Protec and Protec's staff unhindered access to the system and the related hardware and software. Furthermore, the customer shall be obligated to provide Protec in the event of failure with an adequate infrastructure for remote access to the system. Doing so, the customer is obliged to acceptance and signature of Protec's data protection agreement according to § 28 of GDPR (General Data Protection Regulation); lack of signature prevent from supply of support by Protec.

- 6.3 The customer is obliged to personally attend - with at least one factory trained technician - any support action performed by Protec (be it by phone, online/ remote, onsite etc.).
- 6.4 The customer shall name Protec at least one and at maximum three authorized and duly qualified contact persons who may directly call the hotline. Additionally, the customer shall name one qualified staff member as the principal contact person in the event of failure who will make all necessary decisions in connection with the handling of the failure, or who will ensure that such decisions are made without undue delay.
- 6.5 The customer is responsible for carrying out data backups at regular intervals according to the instructions of the applicable instructions for use of Protec. If the absence of according instructions, data backups must be made according to the generally acknowledged principles of secure data processing.

## **7 Remuneration**

- 7.1 In the absence of a specific provision in the confirmation of the order by Protec, the remuneration for the maintenance services to be provided can be gathered from Protec's price list, as amended from time to time. In the case of software leasing, the maintenance fee is included in the annual leasing fee for the software, in the case of Lease & Click it is included in the minimum monthly fee for the Click model; the following paragraphs 7.2 to 7.4 shall not apply in these cases.
- 7.2 The maintenance fee relates to the respective system acquired from Protec by the customer. The initial maintenance fee covers the minimum period under no. 8.3 and is due for payment together with the purchase price for the acquired system. Thereafter, the maintenance fee is an annual fee to be paid at the beginning of each contract year. Timely payment of the maintenance fee is a prerequisite for the provision of maintenance services in the relevant contract year.
- 7.3 Protec is entitled to adjust maintenance fees with a notice period of three months at the beginning of a contract year to compensate for wage and other cost increases, or as part of the general increase in the license and maintenance prices for the Protec systems. The adjustment is first possible after expiration of the minimum period under no. 8.3.

Insofar as the increase is more than 10% compared to the currently paid maintenance support fee, the customer is entitled to terminate the maintenance agreement in writing with a notice period of one month with effect to the end of the current contract year. If the customer does not terminate the maintenance agreement, the price adjustment takes effect at the beginning of the new contract year. Protec will notify the customer of that consequence together with the announcement of the adjustment.

- 7.4 As to the billing and payment of the maintenance fees, Protec's *General Terms and Conditions for the Supply of Goods and Services* shall apply.

## **8 Term, Termination**

- 8.1 The obligation of Protec to provide the contractual maintenance services begins upon the delivery of the system, but not before payment of the purchase price agreed therefor, and of the initial maintenance fee.
- 8.2 In the case of software leasing, the obligation of Protec to provide the contractual maintenance services begins with the payment of the leasing fee for the first year of the contract, in the case of Lease & Click with the payment of the first monthly fee for the Click model. The term of the maintenance agreement in such cases is identical to the term of the contract for software leasing or the contract for Lease & Click. A separate termination of the maintenance agreement is not possible. The following paragraphs 8.3 to 8.5 shall not apply in these cases.
- 8.3 The maintenance agreement is entered into for a minimum period of 12 months. Thereafter, it will automatically be renewed for successive one-year periods (contract year) unless it is terminated by either party subject to three months' prior notice with effect as of the end of the minimum period or any subsequent contract year.
- 8.4 In the event of termination by the customer of the maintenance agreement for a system, the customer may conclude a new maintenance agreement for this system at a later point in time. A prerequisite for conclusion of a new maintenance agreement is that the customer previously brings the system up to date. The software update or upgrade required therefor is to be acquired in this case according to the Protec pricelist valid at the time of conclusion of the new maintenance agreement.
- 8.5 The right to give notice of termination of the maintenance agreement for cause remains unaffected. Good cause for a termination by Protec shall especially be deemed to exist if the customer fails to pay the agreed-upon remuneration for a contractual year despite reminder by Protec and stipulation of an additional period for payment. Good cause for termination by Protec shall also be deemed to exist if an insolvency proceeding over the assets of the customer is initialized or the initiation is rejected for lack of assets.
- 8.6 Notice of termination must always be given in writing.

## **9 Miscellaneous**

- 9.1 Protec is entitled to provide part of the maintenance services through or with the help of third parties.

- 9.2 To the extent that these *General Maintenance Conditions for Protec Systems* contain no special or deviating provisions, the *General Terms and Conditions for the Supply of Goods and Services* of Protec and the customer shall additionally apply to the provision of the maintenance services and the legal relationship between Protec and the customer.

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