**ILC GmbH
Terms and Conditions for Software
Maintenance**

§ 1 Subject Matter and Agreement content
1.
The subject matter of this Agreement is the maintenance of the Software described in the Software Maintenance Sheet (Exhibit) with the scope of services set forth in § 2 and § 3. ILC provides the services for the latest version of the Software. About the maintenance or termination of older Software versions the customer will be informed by Release-Notes which ILC will send to the Customer; a maintenance termination of the Software Versions stated herein will be announced in a timely manner.

2.
The performance of the maintenance service is exclusively subject to the provisions of the Maintenance Agreement and the following Terms and Conditions for Software Maintenance. Deviating contract terms and conditions (e.g., terms of delivery, terms of payment) of Customer do not form part of the contract, including cases in which ILC does not expressly object to them.

3.
Modifications and amendments of this Software Maintenance Agreement and the Terms and Conditions must be in writing, unless otherwise provided in the following terms and conditions; the same applies to a waiver of the mandatory writing requirement.

4.
Additional Licenses of the Software purchased by Customer will be included in this maintenance contract and the charges will be adjusted accordingly. ILC will send Customer an adjusted Software Maintenance Sheet.

5.
Software maintenance shall commence upon installation of the Software at the Customer's site.

6.
Representations in evaluation programs, functional specifications, product descriptions and the like do not constitute a guarantee. Such guarantees require the express written confirmation of ILC.

7.
ILC reserves the right to change the Terms and Conditions for Software Maintenance by giving 60 days notice. Customer may terminate this Agreement for cause within 60 days after receipt of the new Terms and Conditions for Software Maintenance, to take effect at the end of the next calendar quarter. If Customer does not terminate the new Terms and Conditions for Software Maintenance shall apply starting from the date set forth in the notice. If Customer terminates the agreement, ILC will refund the payments which were made for the period exceeding the termination date; other claims and remedies are excluded.

§ 2 Error Reports and Response Times; Trouble-Shooting
1.
ILC shall receive error reports from Customer by E-mail or telephone during the following business hours:

Monday – Thursday 9:00 a.m. through 5:00 p.m. and Friday 9:00 a.m. through 4:00 p.m. with the exception of national and local public holidays at the place of ILC's principal office. Outside these business hours errors reports can be reported via voice message or by E-Mail.

2
The proper processing of error reports is subject to the condition that these are only made by the system administrator of the Customer or by his/her deputy, and are accompanied by a detailed error description according to §9 par. 9. Another pre-condition is the reproducibility of the error.

3.
After receipt of a proper error report filed by Customer, ILC categorizes the error according to the priorities defined in par. 3, assigns a Call-Number, acknowledges the receipt of the error report to Customer via E-mail and establishes contact with Customer within the response time set force in par. 3.

Response time is defined as the period between acknowledgement of acceptance of the error report by ILC to the Customer via E-mail and the establishment of contact with Customer by a ILC technical expert. The response times shall only run during the business hours set forth in par. 1. Services for the error removal are also only performed during these business hours.

§3 Ongoing Development of the Software
1.
ILC shall continue to develop the Software that is subject to this Agreement on an on-going basis. Under the Software Maintenance Agreement, Customer shall be provided new program versions with the following features:

-   versions with enhancements;

-   versions with better performance;

-   new functionalities, unless these are incorporated into a new product released by ILC.

2.
Customer shall receive the standard version of the new software releases and shall be solely responsible for applying any customer-specific adjustments to the new version. ILC is prepared to perform these adjustments for separate compensation.

3.
Customer has no claim for the delivery of new versions on a regular basis.

4.

ILC integration modules or ILC connectors to third party software shall be adapted on demand of the Customer to minor releases of such third party software in a timely manner. The term "minor release" designates normally a new program version marked by a change in the number following the dot (e.g., from 7.0.3 to 7.1 or 6.5 to 6.6) having no influence on the interfaces and API's used by ILC.

In case the third party announces a major release, ILC reserves the right not to perform the adaptations within the scope of this maintenance agreement. Wherever applicable ILC will make a duly announcement in the release notes. Major releases are normally characterized through a change in the first digit of the official release number (e.g., from 4.9 to 5.0). Besides major releases feature one of the following characteristics:

- a change (deletion or modification of calls or functionalities used by ILC) of the API (programming interface of the third party software)

- a new or significantly modified software kernel

5.

Customer shall use the new software releases supplied by ILC within 4 weeks after shipment. In the event that Customer continues to use the previous software versions beyond this 4 week period, Customer waives its rights under the warranty for defects as to quality or title and ILC is released from its liability obligations for the previous version, unless the error is also contained in the most recently supplied software version. With the use of the new software version Customer waives the rights to use the old software version.

§ 4 Modifications of the Hardware and Third-Party Software Environment

1.

Customer shall maintain separate agreements for the maintenance of hardware and third-party software. Customer shall be responsible for ensuring that the maintenance services are adequate for its requirements. However, in the event of hardware or third-party software changes due to maintenance activities, ILC shall endeavor to ensure compatibility of the ILC software with third-party software and hardware within a reasonable period of time. Customer has no claim to the attainment of compatibility with new products of third-party software suppliers under the Software Maintenance Agreement; this shall apply, in particular, with regard to changes in the system architecture, interfaces, or data formats. Adaptations of ILC integration modules or ILC connectors to third party software changes shall be performed as described in § 3.4.

2.

In the event of changes in the hardware or third-party software environment that are not due to maintenance activities, ILC is prepared to assist customer (e.g., linking of new software products, migration of a changed hardware architecture or the customization of third party software) on a separate contractual basis based on the daily labor rates charged by ILC in effect at that time.

3.

ILC advises Customer that changes in the hardware or third-party software environment (including in connection with the maintenance of such hardware and software or with respect to customization of the third party software) shall not be performed without prior consultation with ILC, since these changes may result in the partial or complete failure of the functionality of the Software and thus might delay the error analysis and removal or even make it impossible.

§ 5 Defects in Third-Party Software and Hardware, Operator Errors, Other Services

1.

ILC shall assist Customer with the error analysis, including in cases in which it has not been determined that the error exists in the ILC Software (e. g. user errors, errors of third party software and hardware, other interferences of the system environment). If, during the error analysis, it cannot be demonstrated that the errors that have occurred are due to the ILC Software or services provided by ILC, ILC shall invoice the customer for the expenses incurred on a time and materials basis. In addition, ILC is prepared – to the extent that is technically feasible and by using reasonable time and materials on its part – to assist Customer with the removal of defects that are not due to the supplies and services of ILC. Such services shall also be invoiced separately - where appropriate on a separate contractual basis - at the ILC service rates that are valid at that time.

2.

If, at the request of the Customer, ILC performs services beyond the scope of §§ 2 and 3, such as

- services provided outside the regular ILC business hours at the request of Customer,

- consulting, support, and software engineering services requested by Customer,

ILC shall also invoice such services separately. Customer shall confirm the proper performance of the services after completion thereof. ILC may request an additional service agreement for the delivery of those services.

§ 6 Rights in the Software
1.

The rights in the software are defined in the Licensing Agreement and the arrangements defined in §2 of the Terms and Conditions for Licensing of Software. With the installation of a new software version the right to use the old software version is waived.

2.

For newly-delivered Software versions the terms and conditions on hand apply in their valid version. ILC will send to Customer changes of these Terms and Conditions 60 days before the changes become effective. Customer may terminate this Agreement for cause within 60 days after receipt of the changes, to take effect at the end of the next calendar quarter. If Customer does not terminate the new Terms and Conditions for Software Maintenance shall apply for software versions which were delivered after the commencement date set forth in the notice. If Customer terminates the agreement, he is entitled to use the previously used Software version perpetual on the basis of the Terms and Conditions for Licensing of Software in their valid version at that time; the customer is no longer entitled to receive a new software version ILC will refund the payments which were made for the period exceeding the termination date; other claims and remedies are excluded.

3.

ILC reserves all rights in all work results which ILC delivers to the Customer with respect to the accomplishment of the Agreement, the same applies when the work results were produced in collaboration with the Customer or due to the Customer's suggestion. Customer is granted the perpetual and non- exclusive rights to use and change the results for its internal operations in conjunction with the contractual granted usage rights for the Software. In case the work results are independent of the Software, Customer shall only use and change them for its internal operations on a perpetual basis. The sale and distribution is not permitted.

§ 7 Charge rates and payment
1.

The charge rates for services delivered under this agreement are listed in the Software Maintenance Agreement or the Software Maintenance Sheet (Exhibit) and shall be invoiced in advance on an annual basis.

2.

Additional services (e.g. in accordance with § 4 par. 2, § 5, §8 par. 1) shall be invoiced separately after the completion of the services.

3.

The compensation is subject to the statutory value added tax that is valid at that time. Travel and allowable expenses shall be added if they apply. Travel times are considered as working hours. Invoices shall be due for payment within fourteen (14) days after their receipt with no deduction

4.

If Customer is in default with its payments, ILC may claim interest on payments in the amount provided in statutory provisions. ILC may also stop the further accomplishment of the contractual services, until Customer complies with his payment obligations. ILC shall advise Customer thereof prior to suspending supplies and services. Customer shall not offset claims, unless its counter-claims are undisputed or have become res judicata. Customer shall assign claims against ILC only with the prior agreement of ILC.

5.

ILC may increase the maintenance fee annually to the extent that is reasonable and in accordance with the general economic development by giving thirty (30) days notice. Customer is entitled to terminate this Agreement for cause by giving thirty (30) days notice after receipt of the notice of increase, to take effect at the end of the next calendar quarter. If no termination takes place the increased fee shall apply starting from the date set forth in the notice. If Customer terminates the agreement, ILC will refund the payments which were made for the period exceeding the termination date; other claims and remedies are excluded.

§ 8 Technical Pre-Requisites; System Requirements
1.

Error analysis and removal shall be effected – unless expressly provided otherwise in writing on a case to case basis – via telephone, E-mail or remote data transmission. Customer shall be responsible at its expense, for setting up and maintaining a remote data transmission facility in accordance with Exhibit *remote data transmission* for the entire agreement period including the limitation period for material defects and defects of title. Customer shall assume the telecommunication charges. ILC will only use this remote data transmission after prior agreement with Customer; furthermore the regulations of §13 with respect to data protection shall apply. Customer may terminate the remote data transmission at any time; risk and responsibility for the termination and emerging additional costs bears Customer. In case the access via remote data transmission is not available ILC will perform error analysis and removal if required at the Customer site. These on-site services will be invoiced separately at the ILC rates that are valid at that time.

2.

The technical conditions for the proper functioning of the Software e.g. the system environment etc. are governed by the Exhibits *Technical conditions* and *Third-Party Software*. It is Customer's duty to set up and maintain these technical conditions on its own expense.

3.

ILC shall inform Customer of any changes in the technical pre-conditions and in the system environments supported by ILC in a timely manner. If Customer cannot be reasonably expected to accept such changes, Customer may terminate this Agreement within four (4) weeks after receipt of the notice, to take effect at the end of the next calendar quarter;

if this Agreement is not terminated, Customer shall make the technical changes. Maintenance services can be delivered by ILC only, when all technical pre-conditions with respect to the system environments that are supported by ILC exist. If Customer terminates the agreement, ILC will refund the payments which were made for the period exceeding the termination date; other claims and remedies are excluded.

4.
In addition, ILC warns Customer that remote access according to par. 2 may create a gap within the data security of Customer's system. ILC will take reasonable state of the art safety precautions.

§ 9 Contact Persons and duty to Co-operate
1.
The complexity and individuality of the Software requires extensive co-operation between Customer and ILC. Customer shall contribute to the implementation of the contract services (including the removal of errors) free of charge by rendering, in particular, the services set forth in par. 2 through par. 9.

2.
Customer shall appoint a contact person and his deputy. These persons are responsible for all issues in connection with the performance of this Agreement and act as qualified system administrators. The contact persons co-ordinate all measures which are necessary on Customer site for error analysis and error removal. They are available to ILC for further questions and provide relevant information not only with respect to ILC software but also regarding relevant operating systems, net-works, EDI-components, integrated CAD- and PDM-Systems and other soft- and hardware or system environments. They are the only individuals authorized to issue error messages to ILC.

3.
Without being requested to do so, Customer shall provide ILC with any necessary information (e. g. about business processes, hard- and software environment, data structures) for the performance of the contractual services in a timely manner. This duty also covers the provision of data of sufficient quality and quantity - test or operative data depending on the requirement - by Customer that ILC requires for the performance of this Agreement. The data carriers and data formats shall be harmonized.

4.
Customer shall ensure that ILC is granted access in a timely manner to all facilities during regular business hours if required and if agreed upon access to the hardware and software existing at Customer's site, to the system administration and to Customer's data (also via remote data access) to the extent required for execution of the Services. ILC shall comply with the house regulations of Customer. To the extent the rendering of the Services is impaired or delayed due to this compliance (e.g., due to security regulations or company-wide holidays) Customer is responsible for the impairment or delay.

5.
To the extent required for the performance of the contractual services Customer shall make available to ILC all documentation, software and licenses, or any other records of third-party products utilized for the services to be performed. To the extent that requirements for systems that are operated or are to be provided by Customer or any third

party are stipulated, Customer shall ensure that these requirements are met.

6.
With regard to copyrightable records, programs, and any other material of third-parties made available to ILC, Customer shall ensure that he is authorized to provide these items to ILC for use, to the extent required for the performance of the contractual services. Customer shall indemnify and hold ILC harmless from and against any claims that any third-party may assert against ILC due to the absence of such authorization.

7.
To the extent that contractual services are performed at the Customer's site, Customer shall provide appropriate facilities equipped with sufficient office communication and the EDP systems required for the performance of the contractual services.

8.
Customer shall perform a backup at regular intervals (ILC recommends no less than once a day) and prior to any interference with existing EDP systems (e.g. Installation of new programs or versions). ILC shall notify Customer of any such interference.

9.
Error analysis, processing and removal are only possible, if the appointed system administrators and their deputies deliver qualified error messages, which shall always contain the following information:

- information about the software and hardware environment on the Customer site; status of the installation and respectively changes of the installation/configuration (if they are not already known by ILC). This may involve changes of systems which are integrated with the Software or might be called by the Software

- detailed error descriptions with the relevant error codes, and where required the problem files, configuration files, extracts of the job data base and others.

10.
If Customer does not comply with its duty to co-operate in an orderly, proper form and in a timely manner, ILC may invoice the resulting costs or the additional required effort at the rates that are valid at that time.

§ 10 Default in Supplies and Services; other defaults
1.
ILC is unable to meet the agreed dates, unless Customer complies with any and all of its duty to co-operate. In the event of modifications and extensions and in the event of not sufficient co-operation, the mutually agreed dates may be delayed. In these cases and in other events for which ILC is not responsible (e.g., force majeure, labor unrest, etc.) the dates for supplies and/or services shall be extended by the time of the disruption and by a reasonable period for resumption of the service.

2.
If ILC is in default, Customer shall initially grant a reasonable grace period in written form for the provisioning of supplies and services. Further claims may not be asserted unless this grace period has expired without the default being remedied. If Customer wishes to rescind the agreement upon effectless expiration of the grace period set forth in writing or claim

damages in lieu of the Services or a reimbursement of expenses, Customer shall announce this intention in the letter stipulating the grace period.

3.
If ILC fails to perform its contractually agreed services, or does not perform in due time, or performs improperly, Customer shall first grant ILC the opportunity to properly perform the services within a reasonable time limit set in written form. The period shall allow several attempts of re-performance. After unsuccessful expiration of the period of time, and if ILC is responsible for this breach of contract, Customer may terminate the agreement in accordance with § 14 par. 2 and 3. Claims for damages and the reimbursement of expenses are governed by § 12. Any further reaching claims are excluded. Claims for material defects and defects of title are governed by § 11.

§ 11 Material Defects and Defects of Title
1.
ILC shall initially perform its warranty obligations for material defects and defects of title by re-performance. In the case of material defects, re-performance shall mean, at the option of ILC, the removal of the defect or the supply of an error-free program version or other error free work results. If the use of the Software, as contemplated in this Agreement, is restricted due to defects of title (e.g., because third parties claim rights in or to the Software), ILC shall discharge its re-performance obligation by securing the use of the Software as contemplated in this Agreement, at the option of ILC, by defending against or settling these rights or by the respective modification of the Software. ILC may, in its discretion, directly handle the dispute against the third party in court or extra-judicially on behalf of Customer. In connection herewith, Customer shall assist ILC free of charge to a reasonable extent.

2.
Customer may terminate the contract according to §14 par. 2 and 3 for cause upon the expiration of a reasonable time limit set by Customer in written form, which allows several attempts of re-performance. Claims for damages and the reimbursement of expenses are governed by § 12. These are the exclusive remedies in case of material defects and defects of title.

3.
Due performance of warranty obligations by ILC is, in case of material defects, subject to an immediate notice of defect by Customer in writing or by e-mail containing a detailed description of the defect according to §9 par. 9. The report shall be made by the system administrator or his/her deputy. Customer shall co-operate with ILC in the removal of the defect in accordance with § 9. In case of a defect of title, Customer shall immediately notify ILC in writing about the claims to proprietary rights asserted by third parties against Customer and provide ILC all relevant information and data.

4.
ILC shall assist Customer with trouble-shooting, including in such cases in which it has not been determined that the error exists in the supplies and services provided by ILC. If, during the trouble-shooting, it can not be demonstrated that the errors that have occurred are due to the supplies and services provided by ILC, ILC shall invoice Customer for the expenses incurred on a time and materials basis.

5.
ILC is not obligated to remove material defects and defects of title if the Software has been modified without the consent of ILC, and Customer is unable to show that the material defect or defect of title is not related to this modification. The same applies if Customer makes customizing settings itself after obtaining the prior consent of ILC.

6.
The limitation period for material defects and defects of title is - except in case of intentional wrongdoing - one (1) year and shall begin to run upon shipment.

7.
In case of defects of third party software or hardware which was provided by ILC in the scope of this agreement, ILC may on its option assign to Customer its claims against the supplier concerning this matter. In this case Customer shall only submit its claims against ILC after the effectless - if needed in court – handling of the dispute against the third party.

§ 12 Liability
1.
ILC shall be liable for any violation of contractual duties, regardless of the legal cause (e.g., fault in the execution of the contract, default, material defect and defect of title, violation of any other duty, or tort) provided, however:

- in case of intentional wrongdoing and in the absence of a guaranteed quality for the full amount.

- in all other cases of gross negligence, for the foreseeable and typical damages limited to the individually agreed upon maximum amount for any and all incidents involving damages within one year in connection with the performance of the Agreement; unless otherwise agreed the liability for any and all incidents involving damages in connection with the performance of the agreement is limited to three times the contractual annual fee.

- in case of ordinary negligence or in case of a breach of a contract duty in a manner endangering the purpose of this Agreement (so called cardinal obligation), for the foreseeable and typical damages limited to the individually agreed upon maximum amount for any and all incidents involving damages in connection with the performance of the Agreement; unless otherwise agreed the liability for any and all incidents involving damages in connection with the performance of the agreement is limited to three times the contractual annual fee. Liability for loss of production, interruption of business operations and lost profits, or the loss of interests are excluded.

- No other claims are permissible.

2.
Further claims will be compensated by ILC, as far as ILC has an insurance coverage and receives payments.

3.
The statutory liability for personal injury or product liability remains unaffected.

4.
Except in case of intentional wrongdoing, ILC shall only be liable for the loss of data if Customer has performed system checks and data backups at regular intervals (at least once a

day and prior to any interference e.g. installation of new programs or versions) and only if the data may be reproduced from machine-readable data stores within a reasonable time and at a reasonable expense.

§ 13 Confidentiality and data protection

1.
The parties agree to treat any information, records, and data that are disclosed to them in the course of the performance of this agreement as confidential and to deny any third party access, except for the purpose of this Agreement. Customer shall take the appropriate measures to ensure that unauthorized third parties have no access to the Software subject to this Agreement, or to any other ILC materials. The parties shall notify their employees of their duty of confidentiality. ILC may use know-how acquired during the performance of this Agreement for its business activities in particular for the Software development and may further develop gained common technologies and concepts.

2.
ILC and Customer will comply with the data protection rules and regulations. ILC will process Customer's data electronically and comply with data protection rules and regulations. However, Customer is responsible for securing personal data prior to the commencement of the contractual services in such a manner that no unintended (not required for the performance of this Agreement) access of ILC is possible. In general, Customer shall be responsible for obtaining the authorizations from its employees, customers, and business associates of Customer and any other affected individuals that may be required under the data protection law. Customer shall indemnify and hold ILC harmless from and against any claims that the aforementioned persons may assert against ILC for non-compliance with these duties. This includes also the on site data access or via remote data transmission.

3.
The duty of confidentiality shall survive for five (5) years after the termination of this Agreement.

§ 14 Term and Termination

1.
This Agreement is made for an indefinite time. This agreement may be terminated by each party by giving three (3) months notice to take effect at the end of the calendar year.

2.
The parties reserve the right to terminate any contract for cause. The non-defaulting party shall notify the defaulting party in writing of its intention to terminate this Agreement. The notice shall specify the reason for termination, and set forth a reasonable period in which the default is to be cured. Cause for termination shall exist, but is not limited to the following events:

- irreversible errors preventing operation, or substantial errors in the Software that impair operation, for which no reasonable workaround is available, that may not be reasonably removed;

- if Customer is in default with its payments for more than 6 weeks;

- breach of his duty to co-operate by customer.

- the threat of instituting or the institution of insolvency proceedings against the assets of either party, or if their institution is declined for lack of assets.

3.
Any termination notice must be in writing to be effective.

§ 15 Venue and Governing Law; final clause

1.
Place of performance is the principal office of ILC. The exclusive venue for all disputes arising from or in connection with this Agreement shall be at the city of the principal office of ILC, if Customer is a merchant of trade or a legal entity, or a special fund under German public law or holds no inland place of venue. This agreement shall be governed by German law, and the UN Convention on the Sale of Goods shall be excluded.

2.
If individual provisions of this Agreement are or become ineffective or in case the agreement is incomplete, the effectiveness of the remaining provisions shall not be affected. If one of the cases stated above appears, the contractual partners shall attempt to resolve or amend these topics in a mutual consent, which will accomplish the intended commercial intention as close as possible in a legally allowed manner. The same paragraph shall apply to any omissions.

3.
In case of discrepancies or interpretation difficulties the German language version of the Agreement shall prevail.