

**General Software Maintenance Terms  
of econ solutions GmbH, Landsberger Str. 314, 80687 Munich, Germany  
Valid as of 1 January 2023**

**I. Scope of application**

1. Unless otherwise agreed, the maintenance of the software conclusively listed in the annex (hereinafter also referred to as “**econ software**”) is exclusively governed by these General Software Maintenance Terms (hereinafter also referred to as “**Maintenance Terms**”) if the business relationship is with a commercial enterprise, a legal entity under public law or a special fund under public law. Even if not explicitly contradicted by econ solutions GmbH, other terms and conditions applicable at the Customer do not constitute part of this contract.
2. Even if no further reference is made to these Maintenance Terms when concluding further contracts of the same nature, these further contracts are governed exclusively by the General Maintenance Terms of econ solutions GmbH in the version available at [www.econ-solutions.de](http://www.econ-solutions.de) at the time when the Customer submits its declaration, unless the contractual partners reach written agreement to other effect.
3. The sale and delivery of econ hardware and software is governed by the General Terms and Conditions of econ solutions GmbH.

**II. Conclusion of contract**

1. Offers communicated by econ solutions GmbH are subject to alteration and non-binding unless designated in writing as binding. A legally binding maintenance contract only takes effect upon econ solutions GmbH issuing a written order confirmation. econ solutions GmbH may request the Customer to provide written confirmation of oral declarations.
2. The Customer is bound for a four-week period by any declarations of intent (contract offers) issued concerning the conclusion of the contract.

**III. Contractual object**

1. The sole object of these Maintenance Terms is the maintenance and further development of econ software and the granting of utilisation rights in accordance with these Maintenance Terms. Deliveries and services of other kinds (e.g. delivery of the hardware provided by econ solutions GmbH to the Customer and its maintenance, the configuration and installation of econ software, familiarisation training and advisory services not involving the rectification of disruptions to econ software) do not form the object of these Maintenance Terms. If applicable, such deliveries and services are governed by separate contracts.
2. The scope, nature and quality of services owed by econ solutions GmbH are determined by these Maintenance Terms and the order confirmation issued by econ solutions GmbH. Any disclosures or requirements not contained therein only become part of this contract if

- agreed in writing by the contractual partners or confirmed in writing by econ solutions GmbH. The same applies to retrospective amendments in the scope of services.
3. Drawings, illustrations, measurements, weights and other data are only binding for the execution of orders if explicitly agreed in writing. Specimens always only count as approximate quality, viewing and colour samples.
  4. The Customer is not entitled to transfer of the source programme for the new versions and updates of econ software provided to it in connection with software maintenance.
  5. These Maintenance Terms also apply for the maintenance of econ software if it is used for further measuring points or additional modules.

#### **IV. Maintenance services**

1. In addition to its defect rectification obligations, to the extent that these pertain pursuant to Section XV and result from the software transfer contract concluded with the Customer, econ solutions GmbH also provides the following maintenance services:
  - a) Transfer of the newest respective programme versions of econ software released by econ solutions GmbH for general sale. To this end, the Customer receives an update each year that it imports into the system itself.
  - b) The updating of the software documentation provided to the Customer. This updating of software documentation may be executed by providing electronic documentation or by referring to documentation available for downloading on the internet or a list of frequently asked questions (FAQs).
  - c) The provision of a telephone hotline (Section V).
  - d) The rectification of disruptions to econ software (Section VI).
2. econ solutions GmbH performs the aforementioned services based on the latest technologies and based on the interests of all software users. These services are only performed for the respectively current version of econ software and for the directly preceding version status provided by econ solutions GmbH. Older versions of econ software are only maintained based on separate agreement and in return for separate remuneration.
3. The following services do not form part of the maintenance services provided by econ solutions GmbH:
  - a) Advising on the use of econ software unless this serves to rectify disruptions or the acceptance of fault reports outside the on-call hours stated in Section V 2).
  - b) Maintenance services resulting from econ software being deployed in a system environment not meeting the minimum system requirements of econ solutions GmbH pursuant to Section XII 1 of the General Sales Terms.
  - c) Maintenance services required as a result of Customer intervention in the programme code of econ software.
  - d) Maintenance services relating to the interaction of econ software with computer programmes of other manufacturers that do not form part of econ software.
  - e) Indications as to the use of econ software that are provided in user training and/or basic explanations of the system that can be found in the documentation.

- f) Advice and support on remedying problems caused by the Customer or errors in econ software that are attributable to inappropriate use or to a power failure or power interruption at the Customer.
4. econ solutions GmbH may make new versions, updates and patches for econ software available to the Customer by way of remote maintenance by importing these onto the Customer's systems, providing data carriers or in any other suitable manner.
5. econ solutions GmbH performs the aforementioned services from the time at which the contract is concluded onwards, but not before such time that the Customer has notified it that econ software is in operational use.

## **V. Reporting disruptions in econ software**

1. econ solutions GmbH will advise and support the Customer by telephone or other telecommunications channels in the event of any disruptions arising in the software.
2. The hotline is available to the Customer from 9.00 a.m. to 12.00 p.m. and from 1.00 p.m. to 5.00 p.m. on workdays (Monday – Friday, except on statutory bank holidays at the legal domicile of econ solutions GmbH). During these times, econ solutions GmbH will also respond to fault reports and queries submitted by the Customer by e-mail or directly from econ software using the "Support" menu point. In individual cases, the contractual partners may also agree the provision of fault rectification services outside these times in return for separate remuneration.
3. The Customer will provide a description of disruptions to the software that is as detailed as possible, including a description of the error symptoms, the operating conditions, previous instructions to the software, the number of workplaces affected and a depiction of the system and hardware environment, including any third-party software also used. For this, the Customer should use the form provided for this purpose by econ solutions GmbH. All reports must be made immediately after discovery of the disruption or the malfunction.

## **VI. Disruption rectification**

1. The disruption rectification measures performed by econ solutions GmbH in accordance with these Maintenance Terms are intended to achieve or maintain the functionality of econ software as agreed in the software transfer contract and updated in any subsequent addenda. Accordingly, a disruption exists if econ software does not show the designated functionality in the contractually agreed system environment and when used as intended and if the impacts of such deviation are not merely immaterial.
2. econ solutions GmbH will rectify any disruptions to the software reported by the Customer within an appropriate timeframe in each case or notify the Customer without delay that such rectification is not possible at reasonable expense and will therefore not be performed. In this respect, an appropriate timeframe is one in which econ solutions GmbH, taking due account of its order position and the availability of suitable employees, is able to analyse and rectify the disruptions reported without undue delay. The expense is unreasonable if it exceeds the equivalent value of 35% of the remuneration payable under

this contract for a calendar year, calculated based on the daily rate for a qualified developer.

3. The disruption is rectified at the discretion of econ solutions GmbH and regularly by transferring software which amends and/or supplements the software designated in the order confirmation from econ solutions GmbH, including the transfer of documentation for the amended and/or supplemented functions in a form to be selected by econ solutions GmbH, which may also take the form of online assistance.
4. econ solutions GmbH performs disruption rectification services with the degree of care customary to the sector. econ solutions GmbH provides no guarantee that the reported disruptions can be rectified either at all or within a specified timeframe. Similarly, econ solutions GmbH does not provide any guarantee as to when the software will be available again.
5. Disruptions should be reported via the hotline (Section V) or by e-mail stating their respective priority. Disruptions are classified as follows:

Priority	Classification	Description	Response time (R)
I.	urgent; operations are interrupted	The application is not runnable, the programme crashes, login is not possible	R = 240 minutes
II.	high; operations are impaired	The application is impaired in its functionality or it malfunctions. In particular: Reports are incomprehensible or out of context to the functions activated. Functionalities do not show the expected results. The response time behaviour prevents the software from being used in the usual way	R = 480 minutes
III.	low; operations are not impaired	It is possible to work with the software, if not consistently within agreed parameters, user friendliness could be improved. Malfunctions can be circumnavigated	R = 5 days

The Customer should notify econ solutions GmbH immediately if the disruption reaches a higher priority level. The response time is calculated from the time at which the Customer's

disruption report is received at econ solutions GmbH and runs during the operating hours of econ solutions GmbH, namely from 9.00 a.m. to 12.00 p.m. and from 1.00 p.m. to 5.00 p.m. The allocation of a disruption to a class is based on the presence of identical or comparable characteristics as stated in the description of the disruption.

6. Upon receipt of a correct disruption report from the Customer, econ solutions GmbH commits to initiate disruption rectification measures at the latest within the defined response times. At the same time, econ solutions GmbH will provide the Customer with an assessment of the time expected to be required to rectify the disruption if this is more than four times the response time. econ solutions GmbH is also entitled, but not obliged, to rectify Priority I disruptions outside its own business hours, and those of the Customer, if the Customer commits to cooperating to an adequate extent and covers the additional fees incurred for these services.
7. At its own discretion, econ solutions GmbH may rectify any disruptions, taking due account of the aforementioned prioritisation, by implementing the following measures:
  - a) Providing software on data carriers or online that is to be installed by the Customer itself. This regularly involves transferring software components ("patches"); in specific circumstances, it may also involve transferring complete software requiring new installation
  - b) Rectifying the disruption via remote access to Customer systems, by way of which the software itself is amended or can be amended in the settings
  - c) Proposing a solution to the Customer to circumnavigate or rectify the disruption
  - d) Should the aforementioned measures not be possible or not promise success, on-site rectification of the disruption.
8. For Priority III errors, the rectification by provision of software may be deferred to the next suitable point in time, with other extensions and/or amendments also being made available to the Customer in line with the respective planning. If this point in time is more than three months in the future, econ solutions GmbH will notify the Customer accordingly.

## **VII. Further developments**

1. econ solutions GmbH strives to permanently develop econ software further. This further development of the software may lead to an extension and/or amendment in econ software with the result that new functionalities are available, existing functionalities are optimised in terms of their process and/or user management or the data management is adjusted in line with the latest technology.
2. Depending on the scope of further development, econ solutions GmbH may make further developments in econ software available to the Customer, in some cases without further payment obligations. More extensive further developments are subject to charges. The Customer is not entitled to request specific further developments in econ software.

## **VIII. Services not owed**

1. Subject to divergent arrangements in individual cases, these Maintenance Terms do not create any entitlement to the following services:

- a) The adaptation in econ software in line with other versions of the software in use at other users or marketed by econ solutions GmbH.
  - b) The adaptation of econ software to an amended hardware or software environment, including adaptation to amended operating systems.
  - c) The adaptation of econ software to statutory or other sovereign requirements.
  - d) The rectification of disruptions caused by the Customer or third parties, including process disruptions resulting from third-party software.
  - e) The installation of the software delivered to perform maintenance services.
  - f) Instruction and training of software users.
2. The above list is not conclusive. Failure to name specific services gives no grounds to conclude that such services form part of the contractual obligations of econ solutions GmbH. The rights of the Customer in connection with the warranty for service disruptions assumed by econ solutions GmbH in accordance with these Maintenance Terms remain unaffected.
  3. econ solutions GmbH agrees to perform services not owed under this contract and these terms on the basis of separate agreement as far as its operations allow and in return for separate remuneration.

## **IX. Customer utilisation rights**

1. The Customer receives the same utilisation rights to the software provided by econ solutions GmbH to perform maintenance services (new versions, updates and patches for econ software) as for econ software as stipulated in Section V of the General Sales Terms of econ solutions GmbH.
2. If econ solutions GmbH supplements or replaces econ software with the result that the Customer has more than one – not necessarily complete – software version, the Customer must delete the surplus software, provide written confirmation of such deletion and return any data carriers existing in this context to econ solutions GmbH. Utilisation rights to surplus software lapse upon the expiry of a four-week period after deployment of the new software components.

## **X. Documents transferred**

econ solutions GmbH retains rights of title and copyright to all documents transferred to the Customer in connection with performing maintenance services, e.g. calculations, drawings etc. These documents may not be made available to third parties unless econ solutions GmbH grants explicit written approval for the Customer to do so. Any offer documents, associated calculations and other documents must be returned or deleted upon request; in particular, they must be returned if the order is not placed with econ solutions GmbH. The Customer may also not retain any copies of these documents. One exception involves copies arising due to automatic backups that can only be deleted at unreasonable expense.

## **XI. Maintenance remuneration**

1. The maintenance services described in Section IV are performed for the Customer free of charge for a 12-month period from the conclusion of the purchase contract for econ software pursuant to Section II of the General Sales Terms of econ solutions GmbH. Following expiry of this period, the Customer pays the maintenance allowance stated in its order and in the order confirmation from econ solutions GmbH, which covers all software maintenance costs for the measuring points licenced by the Customer in the initial order. Separate agreement is required for the maintenance of econ software for use at further measuring points not stated in the Customer's initial order or the associated order confirmation from econ solutions GmbH. This provision applies irrespective of whether and how often the Customer has drawn on maintenance services pursuant to Section IV.
2. The quarterly maintenance allowance is payable by the Customer in advance within 10 days of having been invoiced by econ solutions GmbH.
3. Services solely due to the Customer failing to comply with a duty of cooperation, services required due to the incorrect use of econ software or due to the system environment not meeting the requirements pursuant to Section XII 1 of the Sales Terms, and all services not explicitly stated in Section IV will only be performed by econ solutions GmbH in return for separate remuneration pursuant to the current price list, which can be viewed on the website of econ solutions GmbH.

## **XII. Arrears**

1. If the Customer enters arrears with payment of the maintenance allowance, it will receive a reminder from econ solutions GmbH. If the Customer fails to meet its payment obligation for the maintenance allowance even after the granting of a suitable extension, econ solutions GmbH is entitled to discontinue the further provision of maintenance services until such time that the maintenance allowance has been paid. Further claims and rights on the part of econ solutions GmbH remain unaffected.
2. Performance deadlines to be met by econ solutions GmbH are extended by the period in which the Customer is in arrears with payments, as well as by any period in which econ solutions GmbH is prevented from performing the service for reasons for which it is not responsible, as well as by a reasonable start-up period once such reasons no longer apply. Such circumstances also include force majeure and interruptions to operations for which econ solutions GmbH is not responsible. Deadlines are also deemed to be extended by the period in which the Customer has not fulfilled its duty of cooperation, e.g. by not making available key information required to perform the maintenance services, not providing econ solutions GmbH with the access to its own facilities and computers required to perform the maintenance services, not providing econ solutions GmbH with input required to execute the contract or not making its proprietary employees available to a reasonable extent.
3. If the contractual partners retrospectively agree other or additional services which impact on the agreed deadlines, these deadlines are also extended pursuant to Section XII 2.

### **XIII. Duties of cooperation by the Customer**

1. One precondition for the performance of maintenance services in accordance with these Maintenance Terms, and in particular for disruption rectification and treatment by econ solutions GmbH, is that the Customer should deploy the software in its current status. The Customer is not obliged to use the current software status if this is unreasonable due, for example, to the latest respective software version being defective. The Customer must provide econ solutions GmbH with immediate written notification if this is the case. If the Customer is not obliged to deploy the current software status, the obligations of econ solutions GmbH in connection with these Maintenance Terms are suspended. In parallel, the obligation of the Customer to pay the maintenance charge is also suspended. If econ solutions GmbH creates a situation in which the Customer can reasonably deploy the latest status of econ software and if it retrospectively performs the suspended services, then the Customer is also required to pay the remuneration retrospectively.
2. A further precondition for performing maintenance services is that the Customer does not, without agreeing such move with econ solutions GmbH, operate econ software at a location other than at the location and in the system environment specified upon conclusion of this maintenance contract.
3. The Customer will support econ solutions GmbH in all aspects of performing the maintenance services governed by this contract. In particular, in the interests of efficient disruption rectification and treatment, directly after concluding this contract the Customer will appoint two responsible employees (“key users”) and corresponding deputies with in-depth knowledge (administrator knowledge) of the software to be maintained as contact partners for econ solutions GmbH and provide econ solutions GmbH with their names and contact details.
4. These key users pool and coordinate reports and requests from the Customer. Before forwarding these reports and requests, they first isolate the cause of the error based on their own expertise and on any checklists which econ solutions GmbH may provide and ascertain how they can assist the users affected. If they are unable to solve the problems arising, they forward the reports and requests and the completed checklist to econ solutions GmbH. They are entitled to place orders with econ solutions GmbH to perform services not owed under this contract. Other employees of the Customer are not entitled to submit reports and requests to econ solutions GmbH.
5. The key users at the Customer also support econ solutions GmbH during its disruption rectification work, for example by communicating test cases and/or test data, providing error protocols and screenshots etc. If required to rectify the disruption, other tasks performed on the hardware at the Customer are to be discontinued for the duration of the maintenance work.
6. For the purpose of rectifying the disruption, the Customer provides employees of econ solutions GmbH, after advance notice has been provided, with unrestricted access during its customary business hours to all devices and systems on which econ software has been installed and to all existing programmes and telecommunications facilities required to rectify the disruption. Furthermore, the Customer must provide remote maintenance access with the technical design requested by econ solutions GmbH and maintain this at its own expense to enable econ solutions GmbH to rectify any disruptions by way of remote maintenance.



7. If econ solutions GmbH is obliged to perform services whose execution by way of remote data transmission requires it to access the Customer's IT system, the Customer must provide corresponding access to econ software via the internet at its own expense. This access by remote data transmission is executed via a connection that is protected against unauthorised access by third parties. If failure to provide such access renders it impossible to rectify the disruption by remote data transmission, thus necessitating on-site deployment, econ solutions GmbH will charge the Customer for such deployment based on its current price list, plus travel and other expenses.
8. Before reporting any disruption, the Customer will examine with due care to ascertain whether a disruption exists. If this is not the case, the Customer may be charged for the services performed by econ solutions GmbH to process the disruption report at the respectively valid remuneration rates of econ solutions GmbH, plus any expenses incurred, unless the Customer, even when making every reasonable effort and exercising due care, could not have recognised that there was no disruption.

#### **XIV. Material defects and defects of title**

1. econ solutions GmbH will rectify any defects in the computer programmes, updates and patches transferred to the Customer for software maintenance in the context of its disruption rectification pursuant to Section VI of this contract.
2. If econ solutions GmbH transfers software to the Customer for its disruption rectification pursuant to Section VI or its further development pursuant to Section VII, with regard to those software components which produce amendments and additions to the software previously deployed the Customer has the rights set out in this Section XIV and any additional applicable statutory provisions. If the software transferred is identical to the software previously deployed, the software components already in place remain subject to the previously existing rights and existing period of limitation.
3. If econ solutions GmbH is responsible for any infringement of third-party property rights as a result of the software provided in accordance with these Maintenance Terms, econ solutions GmbH may, at its own discretion, either at its own expense and on behalf of the Customer acquire rights of use that are adequate for the contractually agreed use or amend or newly provide the respective service without any impact on its functions, or only such impact that can reasonably be expected of the Customer, in such a way as to ensure that third-party property rights are no longer infringed. The assertion of damages or expense claims is governed by Section XV of these Maintenance Terms.
4. Defect claims expire within 12 months, apart from for claims resulting from intent or wilful deception.

#### **XV. Other liability**

1. econ solutions GmbH bears unlimited liability for damages due to intent or gross negligence. Furthermore, econ solutions GmbH is liable for slightly negligent breaches of material obligations whose infringement threatens achievement of the contractual purpose, or for the breach of obligations whose fulfilment is necessary for the correct execution of

the contract with the Customer and whose fulfilment the Customer can generally expect. In this case, however, econ solutions GmbH is only liable for foreseeable damages typical to the respective contract. econ solutions GmbH is not liable for slightly negligent breaches of obligations other than those stated in the preceding sentences.

2. econ solutions GmbH is not liable for the loss of data or programmes to the extent that the damage is due to a failure by the Customer to implement regular data backups and thus ensure that the data or programmes thereby lost can be retrieved at reasonable expense.
3. If econ solutions GmbH temporarily provides the Customer with hardware or software in connection with this contract, strict liability for defects already present upon the conclusion of the contract is excluded.
4. The aforementioned provisions also apply in favour of the legal representatives, employees and auxiliaries of econ solutions GmbH.
5. The aforementioned limitations on liability do not apply for damages resulting from the loss of life, physical injury or damage to health.

## **XVI. Confidentiality**

1. The contractual partners commit to treat all non-public information of which they gain awareness as a result of the business relationship concerning business operations at the other contractual partner and/or the products and/or services respectively offered as business secrets. The contractual partners store and secure all documents and information provided to them by the other contractual partner in such a way as to prevent access by third parties. The contractual partners may only refer to the business relationship in their advertising with advance approval of the other contractual partner. Drawings, models, templates, patterns and similar objects provided to the Customer by econ solutions GmbH or paid for by the Customer remain the property of econ solutions GmbH. They may not be transferred or otherwise made accessible to third parties.
2. The Customer only makes those business secrets of econ solutions GmbH with which it is entrusted available to those of its own employees and other third parties who require such information to discharge their duties. It instructs such persons of the requirement to maintain confidentiality concerning these business secrets and obtains written commitments to comply with this confidentiality agreement from those third parties to which the business secrets are transferred with the approval of econ solutions GmbH.
3. econ solutions GmbH will oblige its employees and other auxiliaries to comply with data secrecy pursuant to § 53 of the German Data Protection Act (*Bundesdatenschutzgesetz – BDSG*). If, in order to perform the services governed by this contract, it is necessary for econ solutions GmbH to process personal data relating to the Customer, the contractual partners will reach a separate agreement for this.

## **XVII. Contract term, termination**

1. The software maintenance contract concluded by the Customer with econ solutions GmbH in accordance with these Maintenance Terms has an indefinite term and may be terminated by written notification by either contractual partner with a notice period of three

months to the end of the respective calendar quarter, at the earliest however at the end of the second year of the contract. Termination pursuant to § 621 of the German Civil Code (*Bundesgesetzbuch* – BGB) is excluded.

2. This does not affect the right of both parties to terminate the contract for compelling reason. In particular, such reason is deemed to apply if the Customer, for example due to one party having withdrawn from the software transfer contract, is not or no longer permanently entitled to use the econ software purchased by it in accordance with the General Sales Terms, or if the Customer, also having been requested to do so by econ solutions GmbH, has not installed the current version of econ software and launched operations with this within an appropriate deadline. Furthermore, such reason is deemed to apply if insolvency proceedings have been instituted over the Customer's assets if the insolvency administrator refuses to enter into the software maintenance contract or if the institution of insolvency proceedings has been dismissed due to insufficient assets.

#### **XVIII. Place of performance, place of jurisdiction, applicable law**

1. The place of performance is the legal domicile of econ solutions GmbH if the Customer is a commercial enterprise, a legal entity under public law or a special fund under public law. If the Customer is a commercial enterprise, a legal entity under public law or a special fund under public law, the place of jurisdiction agreed for all disputes arising in connection with the contractual relationship is, at the discretion of econ solutions GmbH and depending on the amount involved, Mannheim Local Court or Mannheim District Court (also the Chamber for Commercial Affairs). The same applies if, upon the lawsuit being filed, the place of residence or habitual domicile of the Customer is unknown or if the Customer has moved its place of residence or habitual domicile abroad. The aforementioned provision also applies to any actions in respect of cheques or bills of exchange. Alternatively, econ solutions GmbH may file a lawsuit at the Customer's general place of jurisdiction.
2. This contract is governed by the laws of the Federal Republic of Germany to the exclusion of the UN Convention on the International Sale of Goods (CISG) and the reference norms of private international law.

#### **XIX. Concluding provisions**

1. No ancillary agreements have been reached in connection with these Maintenance Terms. To be effective, any amendments or additions to these Maintenance Terms must be made in writing. This formal requirement may only be waived by written agreement.
2. The assignment of receivables that are not cash receivables is only permitted with the advance written approval of the other contractual partner. Such approval may not be unreasonably withheld.
3. Rights of retention may only be asserted due to counterclaims in connection with the respective contractual relationship.
4. The contractual partners may only impute such receivables as have been legally upheld or are undisputed.

5. If any individual provision of these terms is or becomes invalid or unenforceable, this does not affect the validity and enforceability of the other provisions. The invalid or unenforceable provision will be replaced by a provision that most closely approximates to the economic intention of the contractual partners. The same applies in the event of any omission.

Munich, 1 January 2023