

# SPECIAL TERMS AND CONDITIONS OF PAESSLER AG FOR MAINTENANCE OF STANDARD SOFTWARE

## Sec. 1 Scope

(1) The Special Terms and Conditions terms and conditions set forth below (hereinafter referred to as "maintenance conditions") shall apply to our contracts with customers for maintenance of standard software (hereinafter referred to as "maintenance contract") whether the customer concludes the contract

1. with a third party authorized by Paessler AG
2. or directly with Paessler AG,

provided that they have been referred to in the respective maintenance contract or their validity has otherwise been agreed upon.

(2) Should the customer conclude the maintenance contract with a third party authorized by Paessler AG, then

1. the provisions in the maintenance contract of the third party authorized by Paessler AG primarily apply and
2. the present maintenance conditions merely supplementary apply,

provided that no other agreement has been made.

(3) If the customer concludes the maintenance contract with Paessler AG, then these maintenance conditions apply to this maintenance contract and, unless otherwise agreed in the maintenance conditions, the General Terms and Conditions of Paessler AG supplementary apply. Upon request, Paessler AG shall send these to the customer by email or fax or make the most recent version thereof available to the customer for downloading on its website. The following Terms and Conditions apply for all customers except for US American customers.

## Sec. 2 Software to be maintained

(1) The subject matter of this agreement is maintenance of the software of the "Commercial Edition" license type as stated in the agreement on licensing.

(2) If, during the term of our agreement, we modify our software in order to comply with contractual obligations or on the basis of a statutory or contractual authorization (e.g. by providing new versions), then the software shall be

replaced and superseded by the modified software. The customer is not entitled to demand provision of a previous software version.

(3) Our maintenance refers in all cases to the total corpus of the licensed software held by the customer, to the extent we offer maintenance services for it. If the customer enters a maintenance contract, then the customer must always keep all of the installations for which we offer maintenance services thoroughly maintained.

## Sec. 3 Maintenance services

Throughout the term of this agreement, the customer receives maintenance of the software of the scope agreed pursuant to secs, 4, 5, and 6 of these maintenance conditions.

## Sec. 4 Further development of software

(1) The licensed software will be further developed to provide new versions within the standard release stream of Paessler AG.

(2) For purposes of further software development, the software, including the user interface, dialogs, and the user documentation, may be modified, supplemented, and further developed, provided that the material scope of functionality required to use the software in line with the parties' agreement is retained and the modification is reasonable to the customer for the contractual use and intended use of the software. The authorization to modify the software also includes the authorization to remove functionalities that are not or that are no longer material to the use of the software in line with the parties' agreement, provided that this is reasonable to the customer.

(3) Maintenance shall in all cases be carried out as a part of the life cycle of the software and pursuant to the release strategy of Paessler AG. Should maintenance of the licensed software be discontinued, the customer shall receive a written notice at least twelve (12) calendar months in advance, indicating the deadline in question; sec. 9 (5) of these maintenance conditions shall apply *mutatis mutandis*.

## **Sec. 5 Provision of new versions of the software**

(1) Throughout the term of this agreement, as a part of the standard release stream of Paessler AG, the customer shall be supplied with the most recent version of the licensed software for downloading from a website, of which the customer will be informed in advance.

(2) The provisions of new versions of the software and the granting of usage rights thereto, shall be pursuant to the provisions of the Special Terms and Conditions for licensing the software. With respect to the type and scope of the license, in particular with respect to rights of use to new versions of the software, the respective licensing terms shall apply *mutatis mutandis*, on the basis of which the customer acquired the software.

(3) The customer is authorized to request a new copy of its license key during the term of this agreement.

## **Sec. 6 Support by Paessler AG (manufacturer)**

(1) During the term of our agreement, the customer shall receive support services with respect to technical questions regarding the licensed software (hereinafter: "support").

(2) The following conditions apply to support

1. when the customer concludes a maintenance contract with a third party that is authorized by Paessler AG and which utilizes Paessler AG as a subcontractor to provide support, so that the customer is entitled to receive support directly from Paessler AG, or

2. if the customer has concluded the maintenance contract directly with Paessler AG, provided that Paessler AG provides support on the basis of service contract law (§§ 611 ff. of the German Civil Code (BGB)).

(3) For this purpose, Paessler AG shall operate a support ticket system, which is set up to respond to customer queries. Support is provided exclusively via this support ticket system. Customers may open support tickets either by means of the software or on the Paessler AG website.

(4) The support services of Paessler AG are available to customers during operating hours, i.e. on all business days (i.e. calendar days with the exception of Saturdays and Sundays, with the exception of statutory holidays in the German Federal State of Bavaria, and with the exception of December 24th and December 31st of each year), during the period from 9:00 a.m. to 5:00 p.m. (CET/CEST). Paessler AG is authorized to plan and coordinate the activities required to perform support services at its discretion.

(5) The support provided by Paessler AG is limited to the release versions of the Software for the last twelve (12) months, provided that the Software is installed and

configured according to the setup described on the Paessler AG website at <https://www.paessler.com/prtg/requirements>.

(6) In connection with the support, the customer is assisted with specific questions regarding functionalities, operating the software, and potential problems with the software (e.g. malfunctions of the software caused by users), where the customer itself is unable to resolve the issue based on the error messages provided by the software or the user documentation or general IT knowledge and skills.

(7) There is no obligation to provide support

a) if the customer does not submit its query by using the means of communication designated by Paessler AG pursuant to paragraph 3, or

b) if the customer does not communicate all of the information Paessler AG requires to process the query in a reasonably processed and documented manner.

(8) The customer's rights and obligations in the case of defects of the software shall remain unaffected by the support. Processing of reports of errors of the software is not the subject matter of the support insofar as it falls within the scope of a warranty obligation.

(9) The provision of extended support services (with availability outside the above-referenced hours) or service levels (e.g. reaction and error elimination times) shall require a separate agreement of the parties.

## **Sec. 7 Compensation**

(1) The customer is obliged to pay the agreed compensation.

(2) Unless otherwise agreed, services are invoiced yearly according to the maintenance contract.

(3) Unless otherwise agreed, compensation shall be due in advance. Subject to deviating provisions, the amount shall be payable 30 days after invoicing if the payment method is purchase on account and immediately for all other payment methods.

(4) Unless otherwise agreed, the license fee for the "Commercial Edition" of the software covers maintenance services for a period of twelve (12) months. At the time of license purchase, customers may also enter a maintenance contract for a period longer than twelve (12) months.

## **Sec. 8 Commencement and term of agreement**

(1) The contract term shall begin on the calendar day on which the customer received the license key for the software and the link to download it ("Download Link").

(2) The agreement has a term of twelve (12) months, unless the parties have otherwise agreed.

(3) The parties may extend the term of their agreement only by mutual agreement.

**Sec. 9 Termination of agreement; consequences of termination**

(1) This agreement shall end upon the expiration of the agreed contract term.

(2) This agreement may not be terminated by ordinary termination. The parties' statutory rights of termination remain unaffected hereby.

(3) The parties' right to exercise extraordinary termination is neither precluded nor limited by these terms and conditions.

(4) Any notice of termination shall only be valid if given in written form.

(5) To satisfy the written form requirement, an electronic message is also sufficient, which is displayed to the customer in the software and stored so that it can be reproduced in the original form, and is available to the customer during a period which is appropriate for the contract and the termination of the contract. The notice of termination shall be deemed to have been received by a person authorized to accept declarations on behalf of the customer if it is stored in the software in such a manner that it may be displayed to the customer in the software.

(6) Upon expiration of the agreement, the customer shall no longer have any entitlement to software maintenance services.

**Sec. 10 Reactivation of maintenance**

(1) In the event of termination of the agreement and activation of maintenance by entering a new agreement, the term of which does not immediately follow the term of the old agreement, the customer must retroactively pay the compensation it would have had to pay if it had concluded the new agreement such that its term followed on directly from the term of the old agreement in order to acquire the most current version of the software.

(2) The claim for retroactive payment shall be due and payable at such time as the new agreement is concluded.