

General Terms and Conditions of OPEN MIND Technologies AG for the Maintenance of Software

OPEN MIND Technologies AG, Argelsrieder Feld 5, 82234 Wessling, Germany (hereinafter: **OM**) provides certain maintenance services related to OM Software (hereinafter: **Maintenance Service**) to business persons and companies in the sense of Section 14 of the German Civil Code (hereinafter: **Customer**) on the basis of the below stipulated general terms and conditions (hereinafter: **T&C**), unless OM and the Customer have explicitly agreed otherwise in text form in the sense of Sect. 126b German Civil Code (BGB) (hereinafter: **Textform**) on a case to case basis by way of an offer and its acceptance (hereinafter the “**Individual Agreement**”)

1. Scope of these T&C and Subject Matter of the Maintenance Services

- a. These T&C shall apply for (i) Customers who make use of the Maintenance Service for their own purposes (hereinafter: **End User**) as well as (ii) Customers who act as resellers of the Maintenance Service to third parties (hereinafter: **Partner**) to the extent OM and Customer did not explicitly agree otherwise in the relevant Individual Agreement or reseller agreement.
- b. These T&C shall be limited to the Software, which has been developed by OM or is being distributed under OM’s trademark (hereinafter and -before: **OM Software**). In relation to Software which does not qualify as OM Software (hereinafter: **Third Party Software**) OM may offer Customer deviating terms and conditions for maintenance services for such Third Party Software. Customer accepts that OM’s commitments in relation to any Third Party Software or third party software components that are part of OM Software are contingent upon the respective prior delivery by the Third Party to OM in time and with the required quality.
- c. The term “**Release**” shall mean Major Release, Updates or Hotfix. In case of a “**Major Release**” OM makes available to Customer a variety of Updates and/or Upgrades; “**Hotfixes**” are limited to Updates. “**Upgrades**” are characterized by new functions or material modifications to the licensed Software which will not be offered by OM as part of the Maintenance Services, but must be licensed by Customer outside and in addition to the Maintenance Service under a separate Individual Agreement regarding the perpetual licensing of Upgrades.
- d. OM’s offer on Maintenance Services covers the entire OM Software licensed by the Customer and is not available for parts/individual licenses in use at Customer thereof.
- e. Maintenance Services are at all times limited to the most recent Release which has been made available to the respective Customer.
- f. OM offers Maintenance Services with different service packages at different fee levels (hereinafter: **Service Package**), which Service Packages may be selected by Customer when concluding the related Individual Agreement and which may be switched by Customer during the term of an Individual Agreement in accordance with Sect. 3 (d) of these T&C, provided however that any such Service Package selected or switched by Customer always relates to and covers the entire OM Software licensed by the Customer. For Partners, however, only one specific Service Package is available.
- g. Insofar OM is required to make available a Release under such a Service Package, OM will make the first delivery of such Release by delivery of a data carrier (e.g. DVD), in relation to later deliveries OM may choose between delivery of a data carrier on which the OM Software is stored upon, by way of e-mail, or by enabling the Customer to download the Software from OM’s website. OM will inform Customer on the OM website of the most current Releases. For such Releases the terms and conditions for the perpetual licensing of the maintained Software as agreed between the parties shall apply accordingly, specifically the terms and conditions regarding Customers license rights, the license- and serial codes, the Security Mechanism, the OM-dongle etc.. If no such agreement exists, then OM’s then current T&C on the Licensing of Software shall apply. Any documentation related to a Release will be provided by OM in the form of a help-function, which is integrated in the OM Software.
- h. In case certain services are excluded from the scope of a Service Package (e.g. training services, installation support, Software customizing etc.), any such service may be offered by OM subject to separately agreed Individual Agreements each of which shall be governed by the then current OM’s General Terms and Conditions for Professional Services or for Training.

2. Conclusion of Individual Agreements

- a. No conflicting or other conditions, notably Customer’s general terms and conditions do apply, even in case OM has performed an Individual Agreement without expressly rejecting any such conditions.
- b. All offers of OM regarding Maintenance Services are non-binding, unless OM explicitly identifies the offer as binding for OM. OM may accept incoming offers issued by the Customer within two weeks following the receipt of the offer.
- c. Each Maintenance Service related offer and its acceptance must be in Textform to be valid. Also side- and supplementary agreements, specifications, warranties, representation, guarantees and assurances and any other agreements between the parties shall be valid only if made in Textform and if expressly referencing the respective Individual Agreement to which it belongs. With respect to any guarantees or assurances (“Zusicherungen”) that may be given by OM the additional requirements of Section 3 (b) of the then current T&C of OM for the Perpetual Licensing of Software shall apply.
- d. In case OM offers to provide Customer various deliverables or services with different scope and separate prices (e.g. delivery of different software products, training, professional services, irrespective if offered in one single quote or by separate quotes), each agreement on one of the deliverables or services deems to be a separate and independent Individual Agreement, unless explicitly stated otherwise by the parties. The fact that an offer identifies an overall price for several or all deliverables or services shall itself not be construed as an offer of OM to conclude one single Individual Agreement for these deliverables or services that are part of the overall price.

3. Term of Individual Agreements, Prolongation, Extension and Switching of Service Packages

- a. Individual Agreements on Maintenance Service concluded during the year have a term until December 31 of the same year, unless the Individual Agreement exceptionally provides for a different term.
- b. Individual Agreements on Maintenance Service shall be automatically extended by one year in each case, unless one of the parties

notifies the other party in writing, observing a period of notice of at least three months before the respective extension takes effect, that it does not wish to extend the contract (hereinafter also referred to as "Non-Renewal Notification"), whereby the first non-renewal notification for each of the parties is only permissible after the expiry of a minimum term of one year. The right of each party to terminate the Individual Agreement on Maintenance for cause in accordance with the applicable law remains unaffected.

- c. In case OM provides Customer with additional or supplementary Software licenses during the term of an Individual Agreement on Maintenance Services, Customer shall be obligated to purchase additional Maintenance Service for this additional or supplementary Software. OM will either include in its offer on the perpetual licensing of additional Software a supplementary offer for Maintenance Services as per these T&C covering the additional Software or at least in its offer notify Customer of the requirement to extend the Maintenance Services to the additional software. In the latter case Customer will receive from OM a separate offer on the extended Maintenance Services. Customer shall be obligated to accept any such supplementary or separate offer.
- d. Instead of issuing a Notice of Non-Extension Customer may switch from one Service Package to another Service Package (with higher or lower service levels), provided Customer notifies OM of his intention to switch at least three months before the next extension occurs. In case Customer wishes to switch the Service Package during the term of the Individual Agreement, any such switch shall require OM's prior consent in Textform. Such consent requires that Customer has paid any additional fees resulting from a switch to Service Package with higher service level which additional fees shall be calculated on a pro rata temporis basis. In case Customer switches to a Service Package with lower level during the term of an Individual Agreement, no refund will be provided. Any switch of a Service Package permitted under this Section requires that such switch relates to the entire OM Software licensed by Customer.

4. Changes of Service Packages by OM

- a. OM may, at any time change or reduce Service Packages by notice to Customer in Textform (e.g. by deleting certain functionalities, by updating the supported environment or by introducing additional restrictions on the use), unless such change or reduction would materially affect the scope of the agreed Service Package or unless such change unreasonably affects the specific Customer.
- b. In case Customer can substantiate that the change or reduction is unreasonable or in case OM notifies a material change or reduction of the Service Package, Customer may terminate the affected Individual Agreement with immediate effect as per Sect. 3 (b) of these T&C with effect to the end of the month in which the reduction or change falls. Such termination right ceases to exist three months following the introduction of the change or reduction.

5. Rights to Software Modifications

OM retains ownership to all results or modifications created by OM in connection with Maintenance Service. With respect to these results and modifications Customer shall receive a non-exclusive, non-transferable and non sublicensable right to use as specified in the most current version of the EULA. OM shall be entitled to license these results and modifications to other customers without any restriction.

6. Fees and Payment Terms

- a. OM delivers Maintenance Service against payment of a flat fee, which fee will be invoiced by OM upfront upon conclusion of the Individual Agreement, upon the date of prolongation as Sect. 3 (b) and upon the date of extension as per Sect. 3 (c) for the whole applicable Maintenance Service term. The flat fee depends of the Service Package selected by Customer and will be specified in OM's offer.
- b. All prices and fees - as well as set out in OM's offers and Individual Agreements - are in Euro and exclusive of any sales and any other tax.
- c. Unless agreed otherwise in writing between, OM will invoice the payable amount following effective date of the Individual Agreement and any amounts shall be due and payable without deduction with receipt of the invoice. Customer shall have no right to retain payments and no right to make any set off, unless his counterclaims are acknowledged by OM or finally adjudicated by a competent court.
- d. Invoices will be sent electronically to the Customer by OM.
- e. In case Customer wishes to order Maintenance Service after Maintenance Service expiration or termination or following a period without any Maintenance Service, Customer is required to pay a reinstatement fee which shall be calculated in dependence of the number of missed out Releases.

7. Customer's Cooperation Duties

- a. Defect and problem notifications that are permitted under the applicable Service Package must be in Textform and placed under support@openmind-tech.com. Customer shall use employees sufficiently experienced with using the Software when notifying and describing defects or problems with the Software (as part of the applicable Hotline Services) and follow all related instructions of OM. As far as reasonably practical Customer is required to provide remote access to its systems. The Customer may require OM to first sign an industry standard NDA with the Customer.
- b. Customer will install any Releases made available by OM to Customer as per Sect. 1 (b) above without undue delay, specifically in case this is required to rectify or circumvent any defects of the Software or in order to prevent OM from damages.
- c. Customer shall provide OM only with such information and data necessary for any licensing or customization of postprocessors that has been verified and released by the respective machine manufacturer. Customer is aware that any non verified and non released data or information (e.g. incorrect or outdated machine data) can cause consequential damages, especially damages to property, when using the Software.
- d. The Customer shall verify immediately following the installation of the Software (including any customized postprocessor) that the Software operates defect-free and inform OM about any defects within 10 working days following the download of the license- and serial code latest. Customer shall notify OM about any defects becoming apparent at later stages within the aforesaid timeframe

- e. The Customer shall validate with due care all results that are created by using the Software (e.g. the nc-codes created by the Software), which may include a validation of such results by professional software validation tools, especially if such validation is necessary or at least helpful to avoid any consequential damages to health and property.
- f. The Customer will safeguard that all and any source code, Material, license- or serial codes and any data required to enable the use of the Software under a digital right management system available with the Software will be kept in strict confidence and not disclosed to any third party, unless the EULA provides otherwise.
- g. The Customer shall refrain from any activities enabling any unauthorized use of the Software, documentation and/or license- and serial codes. Customer will inform OM immediately in case Customer becomes aware of any unauthorized use or access to the Software documentation and/or license- and serial codes.
- h. In addition the Customer obligations specified in the T&C of OM for the Licensing of Software shall apply.

8. Liability

- a. OM's warranty obligations for defects as to the quality of a Release or accompanying documentation are limited to OM's duties as described in the agreed Service Package. In case third parties assert claims against Customer for the alleged infringement of intellectual property rights by Releases or the accompanying documentation, the relevant stipulations set out by OM's T&C for the Licensing of the Software on a Perpetual Basis will apply exclusively.
- b. Any liability of OM for a loss of data is limited to the effort typically required for recovering data that has been protected against loss by regular backups.

9. General Provisions

- a. The Individual Agreement, its conclusion and construction shall be governed by the laws of Germany, without recourse to its conflict of Laws provisions. The provisions of the United Nations Convention on the Sale of Goods (CISG) are not applicable.
- b. In case a provision of these T&C or an Individual Agreement is or becomes invalid or unenforceable, the effectiveness of the remaining provisions shall not be affected. The parties shall replace the invalid or unenforceable provision by such valid and enforceable provision as comes closest to the parties' intention at the time of the conclusion of the Individual Agreement.
- c. The performance of an Individual Agreement by OM is subject to the proviso that there are no obstacles due to national or international regulations of foreign trade law, embargoes and/or other sanctions. If such an obstacle becomes apparent to OM, OM shall immediately inform Customer in Textform. If the obstacle cannot be removed with reasonable effort for both parties within four weeks after knowledge, each party shall be entitled to terminate the affected Individual Agreement in writing.
- d. Customer shall observe the import and export regulations to be applied for the receipt and use of deliverables received from OM as well as the data generated by the Software on his own responsibility, in particular those of the USA, and shall conduct the relevant legal or official proceedings on his own responsibility, unless otherwise expressly agreed in the Individual Agreement.
- e. Alterations or modifications of the Individual Agreement shall only be valid if agreed upon in Textform. The same shall apply for any alteration of this letter (e).
- f. The Individual Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all previous communications, representations, understanding and agreements, either oral or written, between the parties with respect to such subject matter hereof.
- g. Exclusive legal venue for all disputes arising in connection with or as a result of these T&Cs and each Individual Agreement shall, for Customer, be the courts competent for the seat of OM. OM may, at its sole discretion, choose to bring proceedings at another venue permitted by applicable laws, provided Customer is a business person, a legal entity under public law ("juristische Person des öffentlichen Rechts") or a public law special funds ("öffentlich-rechtliches Sondervermögen").