

## **GENERAL TERMS AND CONDITIONS**

### **of TIG USA LLC (“TIG”) for project work, delivery and installation of software, maintenance and delivery of hardware (as of March 1<sup>st</sup>, 2020)**

#### **I. General Conditions**

##### **A. Scope**

These General Terms and Conditions of TIG (the “T&C”) shall apply to any contract comprising project-work, delivery, customizing and installation of software supplied by TIG including corresponding hardware and shall also apply to maintenance and support services.

##### **B. Definitions**

For the purpose of these T&C the following definitions shall apply:

- a. Failure – all malfunctions of the Software that lead to a restriction of the intended application of the Software;
- b. Frame Agreement -
- c. Hardware – all devices necessary for the use of the Software;
- d. Hotfix (Patch) – cause-related rectification of a defect and/or failure of the Software which significantly impairs the intended use of the software;
- e. Open Source Software – the term “Open Source Software” (OSS) has the meaning defined and published by the Open Source Initiative (“OSI”) at <http://www.opensource.org>;
- f. Order Confirmation – TIG’s written acceptance of Customer’s order;
- g. Project Contract - The individual agreement entered into by and between TIG and Customer signed by the parties.
- h. Release – new development stage of the Software;
- i. Software – programs, routines and sub-routines including all respective documentation, offered by TIG or any third-party licensor for specific application fields;
- j. Source Code – the code of a program in the programming language used;
- k. Upgrade – bundle of defect- and/or failure-rectifications and major functional improvements and/or modifications of the Software within one single release;
- l. Workaround – temporary avoidance/bypass of a defect or failure;

##### **C. Contract Formation & Contract Documents**

1. The contract documents are complementary and what is required by one shall be as binding as if required by all. In the case of conflict between terms of the contract documents, the following order of precedence shall apply:
  - The Project Contract;
  - Order Confirmation
  - Frame Agreement (if any);
  - These T&C.
2. Quotations issued by TIG shall constitute an invitation for an offer by Customer, always subject to change. Position prices quoted are fixed for the applicable fixed price period.
3. Customer’s order shall constitute an offer and no order shall be binding until accepted and acknowledged by TIG with an Order Confirmation. All orders will be accepted by TIG subject exclusively to the terms and conditions specified herein. TIG will not accept any terms and conditions of Customer’s order form or any other Customer form that are in addition to or are different from these T&C and such additional or different terms shall not apply to any transaction between Customer and TIG. In case of continuous business transactions, these T&C shall be applicable even without special reference thereto.

4. Any services offered shall be deemed to be an indication only and shall be invoiced on the basis of actual expenditure in accordance with the applicable standard rates.
5. An accepted order (otherwise referred to herein as an "order confirmation") shall constitute a legally binding agreement incorporating the terms and conditions hereof.

#### **D. Retention of Title**

Subject to the more specific provisions under Section I (License Grant), title to Hardware shall pass to the Customer upon full payment of the consideration invoiced. Customer covenants at any time, on request, to execute such document(s) as will be required, in order to enable TIG to protect its title to the Hardware under any applicable laws. As security for Customer's payment obligations and notwithstanding TIG's retention of title, Customer grants to TIG a purchase money security interest in and to the Hardware and Customer agrees that TIG may file financing statements under the Uniform Commercial Code or other equivalent legislation in order to perfect such purchase money security interest. Customer's signature on its order or the customer signing the order confirmation shall constitute a signed writing incorporating these T&C, granting TIG a purchase money security interest in the Hardware specified therein.

#### **E. Payment Conditions**

1. The amount and the due date of royalties or fees for Software and Software-maintenance, whether as single or current payments, will be subject to the Project Contract.
2. Unless otherwise agreed by the parties in the Project Contract, payment for any Hardware shall be due upon delivery.
3. Payments are to be made within 14 days from receipt of the invoice by interbank payment without any kind of deduction and free of transaction charges to the designated bank account of TIG in the currency specified in the invoice. No check or bill of exchange will be considered as fulfilment of the payment obligation.
4. A payment is defined to be received on the day TIG has it at its disposal. A possible acceptance of check or bank draft shall be only on account of payment. All interest and expenses associated with the aforesaid (including costs of collection and attorneys' fees) shall be borne by Customer. Payments of Customer – irrespective of the respective payment reference – are initially applied to interest and collection costs and then for the respectively oldest debt of Customer.
5. Interest of 1.5 percent per month shall accrue on any and all late payments. In case Customer fails to pay any amount when due and such failure remains for a period of 14 calendar days or longer, TIG shall be entitled to declare the contract null and void without further notification and may claim damages resulting from Customer's non-performance, which – at the sole discretion of TIG – may be claimed as liquidated damages in the amount of 100% of the amount invoiced. Customer may invoke set-off or exercise a pledge or right to retain only, if its claims have been accepted by TIG in writing or have been adjudicated by court.

#### **F. Subcontracting**

1. TIG reserves the right to sub-subcontract the performance of the respective contract or any portion thereof without limiting its contractual responsibility for such performance. In such case Customer shall be obliged to perform any Customer Responsibilities (as defined below under Section I. F.) for the benefit of TIG's sub-contractor.
2. TIG shall be responsible for any acts and omissions of its subcontractor(s).
3. The sub-contractor will be bound by TIG to confidentiality and data protection.

#### **G. Customer Responsibilities**

1. Customer covenants that it will undertake all measures necessary and conducive for the proper performance of the contract; Customer shall particularly
  - a. supply proper notes, documentation and information necessary for the performance of the services, in particular concerning available facilities, equipment, computer programs and parts of computer programs, which are intended to function with the services to be provided;
  - b. provide the IT infrastructure according to the specifications stated by TIG in the quotation;
  - c. provide any machine interfaces (data as well as electrical interfaces) necessary;
  - d. perform connectivity and wiring work for the machine data acquisition network;
  - e. make available the necessary workspace and the tools and supplies for work;
  - f. make available test plans and test data as well as to prepare and make available the test environment;
  - g. document and inform TIG without delay of errors determined in the course of the test or production running of the services provided in a form that can be reproduced, in any event which is comprehensible;
  - h. provide TIG and its subcontractors with
    - i. access to its IT-infrastructure as reasonably required to perform the contractual activities;
    - ii. adequate Internet connection at site for remote access to TIG's home-server;
    - iii. permission to use third-party Software and hardware to the extent necessary for the performance of the contractual activities;
  - i. make available at its own cost all facilities, equipment and suitably qualified personnel for the cooperation, to the extent necessary for the provision of the services.
2. It is Customer's sole responsibility to regularly backup its data with the due care of a prudent businessman. Customer shall in particular, prior to any installation and/or access by TIG or third parties mandated by TIG to its system, take a complete data security backup of all system and application data. The data backup is to be stored in such a way that the recovery of the secured data is possible at any time. TIG shall not be liable for any data loss, if Customer failed to secure and backup its data properly. Customer must ensure that TIG (and third parties mandated by TIG) are granted the right to use the systems of third parties, to the extent that this is necessary in order to provide the services hereunder.
3. If Customer fails to perform its obligations hereunder in a timely manner, then TIG's obligations, which cannot be fulfilled or only be fulfilled by TIG incurring additional cost, shall be suspended for the duration of Customer's default. TIG may elect at its sole discretion either to (i) terminate the Contract by giving written notice of termination and to hold Customer liable for damages or (ii) perform Customer's obligations or have them performed by a third party in which event Customer shall be responsible for all additional costs thereby incurred. Notwithstanding the foregoing, Customer shall compensate TIG for any additional costs incurred due to Customer's failure to perform its obligations under this Section I.G.

## **H. Insurance**

TIG will at its own expense obtain and maintain during the whole term of any contractual relationship with TIG, professional indemnity insurance and general and product liability insurance with worldwide coverage from a qualified and licensed insurance carrier. TIG will provide insurance details on request. The coverage amounts for personal injury, property damage and financial losses will be at least USD 1,5 million per occurrence and USD 3 million per coverage year, subject to certain sub-limits.

## **I. Liability**

1. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL TIG, ITS EMPLOYEES, AGENTS, SUB-SUPPLIERS OR AFFILIATES BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY FOR ANY INDIRECT, INCIDENTAL, PUNITIVE,

EXEMPLARY, SPECIAL, CONSEQUENTIAL DAMAGES OR SIMILAR DAMAGES, INCLUDING ANY LOST PROFITS OR LOST DATA ARISING OUT OF THE USE OR INABILITY TO USE THE SOFTWARE REGARDLESS OF THE THEORY OF LIABILITY (INCLUDING NEGLIGENCE) AND EVEN IF THE TIG, ITS EMPLOYEES, AGENTS, SUB-SUPPLIERS AND AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

2. THE ALLOCATION OF RISK IS REFLECTED IN THE FEES CHARGED UNDER THIS AGREEMENT, THEREFORE ALL LIABILITY OF TIG, ITS EMPLOYEES, AGENTS, SUB-SUPPLIERS OR AFFILIATES COLLECTIVELY, TO CUSTOMER, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF WARRANTY, BY WAY OF INDEMNITY OR OTHERWISE, SHALL NOT EXCEED THE PRICE PAID BY CUSTOMER FOR THE SOFTWARE THAT GAVE RISE TO THE CLAIM OR IF THE SOFTWARE IS PART OF ANOTHER PRODUCT, THE PRICE PAID FOR SUCH OTHER PRODUCT.

#### **J. License Grant**

1. Unless otherwise agreed to the contrary, TIG hereby grants to Customer (and its successors and assigns as permitted herein) a non-exclusive, perpetual, non-sublicensable, worldwide right to use the Software (in object code form only and only in accordance with the Documentation). Transfer of the Software is subject to the explicit written consent of TIG, which will not be unreasonably withheld.
2. The license grant set out above under Section I.J.1 above shall be subject to TIG's receipt of the full license fee or purchase price therefor.
3. Notwithstanding the foregoing, any rights in the Software and any media where same is embedded, the fonts, symbols, pictures, audio-files and documentation shall remain with TIG. Customer may make copies of the Software solely for backup purposes. Unless otherwise expressly provided for in any applicable copyright law to the contrary, Customer shall not be entitled to modify, decompile, translate, or isolate parts of the Software.
4. Customer may not undertake any activity intended to bypass, defeat or otherwise circumvent any security mechanisms contained therein – especially those employed to ensure compliance with the applicable license conditions – in any way. Customer may not remove any proprietary notices, serial numbers or other labels for identification purpose on the Software or any related documentation belonging to TIG or any third-party-licensor.
5. At TIG's request, but not more frequently than annually, Customer shall furnish TIG with a document signed by Customer's authorized representative verifying Customer's usage of the Software. Customer will permit TIG to review Customer's deployment and use of the Software for compliance with the terms of this Agreement. Any reviews shall be scheduled at least 14 days in advance, shall be conducted during normal business hours at Customer's facilities, and shall not unreasonably interfere with Customer's business activities.

#### **K. Confidentiality**

Notwithstanding any (more specific) non-disclosure-agreement the parties might have already entered into, either party shall keep in strict confidence all information obtained from the other party that was identified as confidential or by its nature or the circumstances in which it was disclosed, ought reasonably to be considered confidential, and not generally known to the public or that has not yet been revealed. Such information may only be used by the Party receiving such information to the extent necessary to perform its obligations under the Project Contract.

#### **L. Loyalty & Non-Solicitation**

1. The parties shall in good faith undertake to perform their obligations hereunder and refrain from any acts that would be unfavourable for the other party under good faith and fair dealing principles.

2. Each party must not, without the prior written consent of the other party, during and for 12 months after the expiry or termination of a business relationship, directly or indirectly engage, employ or seek to engage or employ any person who was an employee of or engaged by the other party. In case of a breach of the foregoing non-solicitation commitment, the party in breach shall pay to the other party as liquidated damages the gross annual salary for the first year of employment of the employee engaged by the party in breach.
3. Without limiting the provisions of this Section I.L., the foregoing paragraph does not prevent either party from employing or engaging a person that responds to a general public advertisement seeking job applicants placed by that party in good faith.

#### **M. Export Control**

1. Customer acknowledges that the products and services supplied by TIG may be subject to applicable statutory provisions and regulations regarding export control and, without export or re-export permits from the competent authorities, may not be sold, leased or otherwise transferred or used for a purpose other than that agreed upon. Customer agrees to comply with such provisions and regulations. Customer acknowledges that such provisions and regulations may change from time to time.
2. If Customer intends to transfer the hardware / Software supplied by TIG to third parties, together with the pertinent documentation, regardless of the manner in which they are provided or regardless of the services performed by TIG, including technical support of any kind, Customer must comply with the applicable provisions of the national and international (re)export regulations. In any case, Customer must comply with the (re-)export regulations of the licensor's country of domicile, the European Union, the United Kingdom of Great Britain and Northern Ireland and the United States of America when passing on goods or services to third parties.
3. If required for export control checks, Customer must immediately provide TIG upon request with all necessary information, including information about the final recipient, final destination and intended use of the Software or services.
4. TIG's obligation to fulfil its commitments under any agreement formed hereunder is subject to the proviso that it is not prevented by any impediments arising out of national or international foreign trade or customs requirements, including embargoes or other sanctions.

#### **N. Processing of personal data (Data processing terms)**

1. In the in the course of the provision of software maintenance and support services TIG may get access to Customer's personal data, which will be processed by TIG within Customer's (documented) instruction. Such data processing refers to any operations or set of operations performed with personal data, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction. For the purpose of order execution, fulfillment of contractual obligations and performance of service by TIG – particularly within the scope of Software maintenance, the following categories of personal data may be processed by TIG or a subcontractor commissioned by TIG:
  - a. names data of Customer's employees and representatives;
  - b. address data of Customer's employees and representatives;
  - c. contact data of Customer's employees and representatives.
4. With respect to the performance of Software maintenance services the parties acknowledge, that Customer is Controller of personal data of its employees and representatives, while TIG or a subcontractor commissioned for these purposes by TIG are Processor of these data. Such data shall be processed exclusively in accordance with individual contractual provisions, these General Terms and Conditions or the Customer's written instructions.
5. As a processor TIG and any subcontractor commissioned by TIG shall:

- a. process the personal data of employees and representatives of the Customer only in accordance with individual contractual provisions, these Terms and Conditions or on the written instructions of the Customer;
- b. not transfer personal data to a third country without customer's consent, whereas such transfer is only permissible, if the respective third country ensures an adequate level of protection or has appropriate safeguards to protect the legitimate interests of data subjects;
- c. ensure that persons authorized to process personal data have undertaken to maintain data secrecy and confidentiality or are subject to a corresponding legal obligation of confidentiality;
- d. take appropriate technical and organizational measures to maintain confidentiality for any personal data processed;
- e. undertake any subcontractor commissioned for the processing of personal data to the provisions of this Data processing terms or similar terms;
- f. as far as possible support Customer by appropriate technical and organizational measures, to enable Customer to properly react on any queries, based upon data subjects right under applicable law, taking into account the means of processing;
- g. in accordance with Customer's choice or instruction erase or return to Customer all personal data, and erase all existing copies, unless otherwise provided by law;
- h. provide Customer with all information necessary to prove compliance with the above obligations and to enable and contribute to the performance audits by the competent authority, customer or its representatives.

## **II. Specific conditions for project work, delivery and installation of Software**

### **A. Scope**

In addition to the general conditions set forth herein (Section I. and V.), the provisions of this Section shall exclusively apply to the project work, delivery and installation of Software.

### **B. Scope of Supply**

1. The purchased Software will be delivered and installed in the then current release-status. The detailed scope of supply will be further specified in the respective individual agreement.
2. After delivery and installation Customer shall only be entitled to a new Software version free-of-charge to the extent provided by TIG in accordance with and subject to the respective Software maintenance agreement, if any. Any errors existing or appearing in a previous Software version will not be fixed by an individual remedy (Hotfix/Patch) under warranty after release of a new Software version that has already fixed such errors; therefore, Customer's sole remedy with regard to such errors shall be the installation of the new Software version.

### **C. Preparations and Organization**

Planning, project management and change requests are determined exclusively by the respective contractual agreement and its attachments.

### **D. Delivery and Installation**

1. TIG will deliver to Customer Software that shall have the functions as further specified in the Project Contract or Order Confirmation.
2. TIG will periodically report to Customer about the progress of work. If TIG has reason to believe that the work cannot be finalized within the agreed time frame, it shall promptly notify Customer thereof.
3. The Project Work Product may include Open Source Software ("OSS"); with respect to OSS the provisions of Section I.J. [License Grant] shall be amended and superseded by the conditions of use underlying the OSS (the "OSS-Conditions"). TIG shall make the source code available or

accessible to Customer only to the extent stipulated in the OSS-Conditions. TIG shall notify Customer of the fact that OSS and OSS-Conditions exist and make such OSS-Conditions accessible to Customer or, if required according to the OSS-Conditions, provide Customer with such OSS-Conditions.

#### **E. Acceptance**

Type, scope and course of any acceptance procedure shall be determined by the Project Contract or Order Confirmation.

#### **F. Limited Warranty**

1. Subject to the limitations and conditions set forth herein, TIG warrants that commencing from installation, and continuing for a period of 6 months: (i) the Software will substantially conform to the functionalities specified in the respective program documentation, provided that the Software (the "specifications") is used in accordance with the applicable installation requirements and under the applicable conditions of use; and (ii) any Hardware furnished will be free from defects in materials and workmanship. Except for the foregoing, the Software is provided "AS IS". The above warranties specifically exclude defects resulting from accident, abuse, unauthorized repair, modifications, or enhancements, or misapplication. TIG does not warrant that use of the Software will operate uninterrupted or error free. In addition, due to the continual development of new techniques for intruding upon and attacking networks, TIG does not warrant that the Software or any equipment, system or network on which the Software is used will be free of vulnerability to intrusion or attack. Delivery of additional copies of, or revisions or upgrades to, the Software, including releases provided under support services, shall not restart or otherwise affect the warranty period.
2. Customer's sole and exclusive remedy and TIG's entire liability and the liability of its suppliers under this limited warranty will be (i) repair or replacement of defective Hardware and/or (ii) repair, replacement, or refund of the purchase price of the software, in both cases subject to the condition that any error or defect constituting a breach of this limited warranty is reported to TIG promptly upon its occurrence (notification of non-conformity) within the warranty period. Such notification of non-conformity shall include a comprehensible description of the error symptoms annexed with written recordings, hard copies or other documents demonstrating the defects.
3. TIG expressly excludes any warranty for
  - a. third-party Software not included in the scope of the contract;
  - b. the interoperability of contractual Software with other Software programs used or intended to be used by the Customer, unless otherwise expressly agreed to the contrary;
  - c. merely short-term, software-typical functional interruptions or malfunctions;
  - d. Software to which the Customer or (on the Customer's behalf) third parties have made modifications without the prior written consent of TIG, even if the defect occurs in an unmodified part;
  - e. modifications by the Customer or third parties (commissioned by the customer) to the hardware or hardware configuration originally provided for the Software installation;
  - f. improper handling or errors in the operation or use of the Software by the customer or third parties (commissioned by the customer)
5. Prerequisite for any warranty claim is a prompt examination or testing of the Software upon delivery or after installation as well as a prompt written notice of defects, in which Customer must, by using commercially reasonable efforts, disclose in detail the discrepancy from the specification, the operating steps which led to the defect as well as the error message of the Software.
6. Prerequisites for any rectification of defects:
  - a. deviation from Specifications affects the functions of the Software;
  - b. deviation is reproducible;

- c. Customer has installed any free of charge upgrades and modifications within the warranty period;
  - d. Customer provides TIG with all footage and information necessary for rectification of defects; and
  - e. Customer has granted TIG access to the respective hardware and Software during Customer's regular business hours.
9. If the Software does not meet the Specifications and TIG fails twice to remedy within a reasonable time, each party shall have the right to terminate the Project Contract on the Software affected with immediate effect against reimbursement of the services provided.
10. EXCEPT AS SPECIFIED IN THIS WARRANTY SECTION, ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS, AND WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, SATISFACTORY QUALITY, NON-INTERFERENCE, ACCURACY OF INFORMATIONAL CONTENT, OR ARISING FROM A COURSE OF DEALING, LAW, USAGE, OR TRADE PRACTICE, ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW AND ARE EXPRESSLY DISCLAIMED BY TIG, ITS SUPPLIERS AND LICENSORS. TO THE EXTENT THAT ANY OF THE SAME CANNOT BE EXCLUDED, SUCH IMPLIED CONDITION, REPRESENTATION AND/OR WARRANTY IS LIMITED IN DURATION TO THE EXPRESS WARRANTY PERIOD REFERRED TO ABOVE.

### **III. Specific conditions on Software maintenance**

#### **A. Scope**

The specific provisions of this Section shall exclusively apply to all services provided relating to Software maintenance. General conditions set forth in these T&C (Section I. and V.) shall apply, unless otherwise provided hereafter.

#### **B. Scope of Service**

1. Services provided by TIG under Software maintenance include:
  - a. Fixing of Failures;
  - b. Supply with and implementation of Software updates, patches and bugfixes;
  - c. Furnishing of further developments of the Software, subject to functional extensions such as new systems or system parts;
  - d. Application support, including, but not limited to, information and instruction on the operation of the Software, troubleshooting and workarounds as well as replying to queries placed via TIG-Helpline within the agreed helpline hours by Customer's system supervisor.
2. Beyond the scope of services specified under Section III.B.1, TIG will provide the following additional services at Customer's special request:
  - a. Telephone support for the Customer regarding questions on functionality and application possibilities of the Software;
  - b. Extension of the application support to persons other than the Customer's system supervisor or the respective deputy;
  - c. On-premise failure diagnosis;
  - d. Support, consultation and introduction of Customer regarding installation of new Software versions, whereas such service shall be ordered at least two weeks in advance the scheduled installation.

#### **C. Fees**

1. Fees for Software maintenance services are set forth in the Project Contract. TIG reserves the right to increase the agreed fees once per calendar year to correspond to increases in the Consumer Price Index (CPI).



2. Additional services pursuant to Section III.B.2. shall be at actual cost based upon the standard rates as amended time by time. These standard rates are provided to Customer on request.

#### **D. Service Principles**

1. TIG shall perform all services under Software maintenance using that care, skill, and diligence that would ordinarily be used by similar professionals in similar circumstances considering the specific requirements of Customer's business operations.
2. Customer shall appoint a system supervisor as well as a deputy, trained by TIG in the application of the Software and having appropriate experience in application.
3. Unless otherwise agreed, TIG provides services under Software maintenance exclusively to the system supervisor or his/her deputy.
4. Customer shall notify TIG without undue delay on any change of the system supervisor or his/her deputy.
5. Customer shall provide TIG with the e-mail address of the system supervisor and his/her deputy.

#### **E. Remote Support Access**

Customer shall furnish appropriate connectivity for remote support according to the specifications provided by TIG, in order to enable troubleshooting by means of remote maintenance. Any connectivity costs incurred by remote maintenance shall be borne by Customer

#### **F. TIG-Helpline**

1. Within the scope of Software maintenance TIG shall rectify and fix all reported Failures.
2. Unless otherwise agree TIG-Helpline hours are:
  - a. Monday to Thursday 8 a.m. to 12.00 a.m. (ET), and 1 p.m. to 5 p.m. (ET);
  - b. Friday 8 a.m. to 12.00 a.m. (ET), and 1 p.m. to 4 p.m. (ET). Failure reports shall only be accepted by the TIG Helpline within the aforementioned service hours.
3. In event of a Failure, Customer shall provide a specific, comprehensible and accurate failure report which has to contain all information enabling TIG to identify the cause of the Failure and to define strategies for rectification. This particularly includes information on the type of Failure, the description of the system status when the Failure occurred, the components affected and the frequency with which the defect occurred. The failure report can first be reported verbally via the TIG Helpline and must be confirmed in writing by e-mail, if necessary, at the request of the employees employed there by TIG; if possible, further information (screenshots, error logs, etc.) must be included.
4. Failures will be rectified via TIG-Helpline, e-mail or remote maintenance. If Customer insists on troubleshooting on-premise, Customer shall bear the costs of this service at agreed standard rates and travel/lodging expenses.
5. For the initiation of troubleshooting a maximum reaction period of four hours starting from receipt of the failure report at TIG-Helpline shall apply. If additional information to an initial failure report is required to identify the Failure, the reaction time shall begin upon receipt of the necessary additions.

#### **G. Troubleshooting**

1. Failures which substantially impair the intended use of the Software shall be rectified within a reasonable period via hotfix (patch); if rectification via hotfix is not possible or feasible within a reasonable period of time, TIG shall provide suitable workarounds and instruct the Customer accordingly to allow the Software to run with Customer. For the purpose of these Terms and Conditions "reasonable period" means the period of time that results from weighing the severity of the impairment of use on the one hand against the technical possibilities on the other hand.

2. Any Software improvements and fixes developed and released by TIG, will be implemented in a new release and made available.
3. If Customer does not install a new release of the Software, any claims regarding Failures, that would have been fixed, shall be forfeited.
4. Services rendered by TIG under Software maintenance shall include the recent main version of the Software as well as the main version immediately preceding. Software maintenance, however, is limited to only one main version.
5. Those parts of the Software implemented by hotfix or new release are subject to the same license grant as the originally installed Software.

#### **H. Warranty**

To the extent that the Software is replaced by a new release within the scope of Software maintenance, the provisions on warranties for Software (see Section II.G.) shall apply with a warranty period of 6 months, whereby the warranty period for the originally installed Software version shall remain unaffected.

#### **I. Term & Termination**

1. Unless otherwise agreed, a contract on Software maintenance services shall be effective as of the date of acceptance of the Software by Customer or, if the parties failed to agree on a specific acceptance procedure, the installation date, and shall continue to be effective for an indefinite period of time, unless earlier terminated by either party upon 3 months' written notice prior to the end of the respective contract year.
2. Notwithstanding the foregoing, either party may terminate the Project Contract with immediate effect for cause, if:
  - a. a party ceases payment or announces cessation of payment;
  - b. bankruptcy or a similar proceeding is commenced against a party;
  - c. an application for insolvency against a party is dismissed due to the lack of cost-covering assets;
  - d. a party materially breaches this contract and fails to cure such breach within reasonable time.

### **IV. Specific conditions on the purchase of hardware**

#### **A. Scope**

In addition to the general conditions set forth herein (Section I. and V.), the provisions of this Section IV. shall exclusively apply to the purchase of hardware.

#### **B. Scope of Supply**

1. TIG exclusively supplies hardware required for the use of the Software distributed, developed or adapted by TIG.
2. The hardware to be delivered is determined by the respective contract. Any contractual agreement on project work, delivery and installation of Software implies the purchase of hardware required for the use of the Software

#### **C. Consideration**

Unless not specified within a contractual agreement on project work, delivery and installation of Software, consideration for hardware is subject to a specific agreement.

## **V. Miscellaneous**

### **A. Governing Law and Place of Jurisdiction**

The contract arising out of TIG's acceptance of Customer's order shall be governed by and construed according to the laws of the Commonwealth of Pennsylvania and the parties hereto agree that any claims or actions relating to the Software or the contract arising out of TIG's acceptance of Customer's order may only be brought in the Court of Common Pleas of York County, Pennsylvania or the United States District Court for the Middle District of Pennsylvania. The parties hereby submit to the jurisdiction of such courts and waive change of venue to any other jurisdiction. In the event of litigation arising in connection with the Software or the contract arising out of Seller's acceptance of Customer's order, the party which substantially prevails in such litigation shall be entitled to reimbursement by the other party of its attorneys' fees, court costs and related litigation expenses.

### **B. Force Majeure**

Neither party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder (except for the payment of money) on account of strikes, shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war, governmental action, earthquakes, or any other unforeseeable cause which is beyond the reasonable control of such party.

### **C. Notices**

All notices, demands, or other communications herein provided to be given or that may be given by any party to the other shall be deemed to have been duly given when made in writing (including electronically and facsimile transmission) and shall be given or made by electronic mail, facsimile, personal delivery or registered or certified mail, return receipt requested and with all postage prepaid. If a Notice is given (i) after 5:00pm (ET); or (ii) on a day which is a Saturday, Sunday or bank or public holiday in the place of receipt, it is taken as having been given at 9:00 am (ET) on the next day which is not a Saturday, Sunday or bank or public holiday in that place.

### **D. Further Assurance**

Each party must promptly do whatever any other party reasonably requires of it to give effect to this Agreement and to perform its obligations under this Agreement.

### **E. Waiver**

The failure of either party to require performance by the other party of any provision hereof shall not affect the full right to require such performance at any time thereafter; nor shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of the provision itself unless approved in writing by the parties.

### **F. Independent Contractor**

Neither Party will be deemed to be the employee, representative, agent, joint venturer or partner of the other Party for any purpose. Neither Party has the authority to obligate or bind the other, or to incur any liability on behalf of the other, nor to direct the employees of the other.

### **G. Severability**

The contract concluded subject to these Terms and Conditions shall remain effective, even if any term or other provision thereof is determined by a court of competent jurisdiction to be invalid, illegal or incapable of being enforced by any rule of law or public policy, all other terms, provisions and conditions of the contract shall nevertheless remain in full force and effect. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, it is also the intention of the parties that in lieu of each clause or provision that is illegal, invalid or unenforceable, there be

added as a part of the respective contract a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.