

Preamble

The following Terms and Conditions apply to the system maintenance of hardware services issued by amalphi GmbH, Birkerfeld 42, 83627 Wangau, Germany as part of service agreements for IT and/or ITC landscapes ("**System Maintenance Terms and Conditions**").

Definitions

The following definitions shall apply to these System Maintenance Terms and Conditions:

"**Working day**" is Monday to Friday except for public holidays in the free state of Bavaria (Germany).

"**Manufacturer**" means the manufacturer of a device listed in the Service Certificate.

"**Force majeure**" means any circumstance which is beyond the control of the party affected as a result of which such party is unable to perform its obligations, in whole or in part, under this agreement, including floods, unavoidable accidents, natural disasters, riots, war, civil war, industrial disputes, terrorism and operational disruptions or official orders for which such Party is not responsible.

"**Non-authorized third parties**" are companies and persons who have not been expressly engaged by the Service Provider to perform contractual services.

"**Response time**" is the time period in which the Service Provider must begin troubleshooting.

"**Service Provider**" is the amalphi GmbH, Birkerfeld 42, 83627 Wangau, Germany.

"**Service Recipient**" is the recipient of services named in the Service Certificate.

"**Service Certificate**" is the documentation of the services to be provided by the Service Provider.

"**Service hours**" means 8:00 a.m. to 5:00 p.m., unless other service hours are expressly agreed in the Service Certificate.

"**System support**" means a service by the Service Provider which is additional to the system maintenance services for the operating systems, system-related software, microcodes, etc., of the Service Recipient, where necessary with the involvement of a subcontractor.

"**System maintenance**" means the system maintenance service of hardware under a separate Service Certificate issued by the Service Provider and countersigned by the Service Recipient.

"**Subcontractors**" are third parties engaged by the Service Provider who perform services required under a Service Certificate on behalf of the Service Provider.

"**Recovery time**" is the time period required by the Service Provider to successfully perform the troubleshooting.

Scope

An agreement on system maintenance and/or system support is concluded upon the Service Recipient's unchanged acceptance of the Service Provider's offer. By accepting, the service recipient agrees to the incorporation of these System Maintenance Terms and Conditions.

Deviating conditions of the Service Recipient do not become part of the agreement, unless they are expressly accepted by the Service Provider in writing. The performance of services by the Service Provider with no objections does not imply acceptance of any terms and conditions of the Service Recipient.

amalphi GmbH

Birkerfeld 42
83627 Wangau
Tel. +49 151 203188-10
www.amalphi.de, info@amalphi.de

Managing Director: Peter Poths
HR München HRB 266050
VAT no: DE345955651
DUNS no: 343677789

Bank details:
Stadtsparkasse München
IBAN: DE13 7015 0000 1006 5122 87
BIC: SSKMDEMXXX

1 Service Description

1.1 Repair (*Instandsetzung*)

- 1.1.1 The repair includes, at the choice of the Service Provider, the recovery of an operational state of the devices listed in the Service Certificate after a defect which was not caused by the Service Recipient or Force Majeure and which occurred regardless of the preventive measures provided by the Service Provider for the prevention of malfunctions. The repair will be performed by repair or replacement of parts at the discretion of the Service Provider.
- 1.1.2 The repair will be carried out on request within the service hours "on site" either by the Service Provider or by a subcontractor.
- 1.1.3 In case the Service Provider carries out repair work outside the service hours at the request of the Service Recipient, the Service Provider may charge surcharges for the services provided outside the agreed service hours (overtime, Saturday and Sunday and public holiday surcharges).
- 1.1.4 The Service Provider will provide the devices listed in a Service Certificate with a serial number with all technical modifications mandatorily required by the manufacturer. To the extent that these modifications are subject to a fee, the Service Recipient is obliged to bear the costs for the change. The Service Provider only will be obliged to make fee-based modifications in case the Service Recipient requests these in writing in the individual case.
- 1.1.5 If required, the Service Provider will provide the Service Recipient with a "round-the-clock" on-call service. The use of such a service is subject to a written agreement and will be charged separately unless such service is expressly covered by the Service Certificate.
- 1.1.6 The services of the Service Provider under these System Maintenance Terms and Conditions do not include the elimination of malfunctions or defects
- which are caused by the manufacturer (serial defects) or which already existed at the time of delivery (DOA)
 - which are caused by force majeure, short circuit or corrosion, deposits or contamination
 - which are caused by the Service Recipient or third parties engaged by the Service Recipient, as a result of
 - gross negligence or intent,
 - external influence,
 - operating errors, improper use or use contrary to the intended use
 - operation of the devices in environmental conditions other than defined by the manufacturer,
 - transport or improper "shutdown" of the system,
 - defective wear parts, e.g. pressure rollers (*Andruckrollen*) or similar
 - the improper replacement or use of consumables, other internal and external accessories, such as remote controls, lamps, internal and external cables, computer mouses and external keyboards,
 - on devices which are still covered by any manufacturer's warranty, unless the Service Provider extends the manufacturer's warranty through its services; in this case, the Service Recipient authorises the Service Provider or its authorised third parties to carry out the replacement of the parts on its behalf with the manufacturer,
 - of devices that either fail to meet a performance characteristic without an identifiable hardware fault or that are prototypes,
 - due to a failure of batteries or accumulators.

1.2 System Maintenance

- 1.2.1 System maintenance includes preventive measures without cause, which are intended to comprehensively maintain and ensure the functionality and operational readiness of the concerned devices; in particular, these services are intended to prevent and, as far as possible, avoid any malfunctions and failures. The scope of services includes regularly recurring measures (e.g. inspections or maintenance) which, where necessary, may be accompanied by possible repairs or the installation of spare parts.
- 1.2.2 System maintenance services are part of the Service Provider's service obligations and will be noted accordingly in the Service Certificate.
- 1.2.3 Services, including updates and upgrades in connection with the operating software (releases) of the devices, system-related software and microcodes as well as EC levels, also are subject to a separate, fee-based order which must either be specified separately in the Service Certificate or otherwise be agreed in a separate Service Certificate.
- 1.2.4 Services for adjustment work, service settings, general or preventive maintenance work as well as work on settings which are not required due to a hardware-related malfunction also are subject to a separate, fee-based order and must either be specified separately in the Service Certificate or otherwise be agreed in a separate Service Certificate.

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Birkerfeld 42
83627 Warngau
Tel. +49 151 203188-10
www.amalphi.de, info@amalphi.de

Managing Director: Peter Poths
HR München HRB 266050
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1.3 Replacements Parts

When installing spare parts, the Service Provider will use either original parts or replacement parts whose function are fully identical to a new part. Timely installation of spare parts prevents or avoids potential malfunctions or failures of devices.

2 Service Provision

- 2.1 The Service Provider's obligation to provide the contractual services refers to the hardware and software conditions (EC level) specified in the Service Certificates.
- 2.2 All contractual services will be provided by directly the Service Provider or by a subcontractor. The Service Provider reserves the right to change the subcontractor within the term of the agreement.
- 2.3 A claim (case of damage) must be reported to us in writing (by letter) or in text form (e.g. by e-mail) within 14 days of knowledge of the damage. The later assertion of a claim is excluded. The obligation to give notice of defects pursuant to Sec. 377 et seq. German Commercial Code (*Handelsgesetzbuch*, HGB), as it is applicable between German merchants, shall remain unaffected.
- 2.4 With regard to the repair, the Service Provider is only obliged to provide the service within a certain period of time (service level agreement (SLA)) if a response time or a recovery time is expressly agreed in the Service Certificate.
- 2.5 The place of performance is the installation site specified in the Service Certificate.
- 2.6 The Service Recipient will immediately inform the Service Provider or a third party authorised by the Service Provider by telephone and/or email without undue delay on errors and malfunction reports, stating the device serial number, the installation site, the detailed circumstances of the occurrence of the error / malfunction, its effects and possible causes (if recognisable). The Service Recipient will provide all necessary documents and information required by the third party authorised by the Service Provider for diagnosis troubleshooting the error / malfunction and will grant access to the premises, the hardware and, where applicable, the software.
- 2.7 The Service Recipient will take appropriate measures to avert and minimise the damage and is obliged to obtain and follow the instructions of the Service Provider. In the event of existing claims for compensation against any third party, the Service Recipient undertakes to assign the same to the Service Provider.
- 2.8 The Service Recipient will inform the Service Provider in writing without undue delay on any modifications to the installation site of the registered devices.
- 2.9 If the Service Provider incurs changed expenses due to the change of the installation site, the Service Provider is entitled to adjust the service fees accordingly.
- 2.10 This agreement provides the Service Recipient with the flexibility to register and de-register IT and/or ICT devices at any time during the term of the agreement for any term and SLA.

Any additional device registrations can be made in writing by the Service Recipient to the Service Provider at any time. The individual prices for the subsequently registered devices valid at the time of the subsequent registration will apply. The scope of the agreement will expand accordingly to the additional registrations of devices. The additionally registered devices and the fee incurred for them are subject to a separate Service Certificate and invoiced separately by the Service Provider.

The Service Provider may de-register the devices falling under the agreement if and to the extent that the Service Recipient proves in writing that they will not continue using the respective devices. The volume of the de-registered devices may not exceed 20 % of total contract volume including all registered devices in a contract year. Deregistration shall take effect at the end of the month in which the proof of discontinuation of use is provided. Any remuneration paid in advance for the month in question will not be refunded. If the contract volume of the deregistered devices exceeds 20 % of the total contract volume of all registered devices in a contract year, the remuneration shall be reduced by a maximum of 20 %.

- 2.11 The contract volume is the sum of all devices that are shown as "under service" in the active Service Certificates. The starting volume will always be calculated from the first Service Certificate.
- 2.12 The value of the device shall be equal to the respective acquisition value of a system at the time of initial installation. In case of used or so-called refurbished devices, the device value will be calculated and estimated by the Service Provider.
- 2.13 The contract volume and/or the service fee may change due to registrations or de-registrations of devices during the term of the agreement.

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2.14 Where the contract volume decreases during the contract period, the Service Provider will offset the credit balance resulting from the non-consumed service and, where applicable, SLA fees against the calculation of a further service period, against a later registration or against a follow-up agreement. Partial months are counted as fully billable months.

3 Cooperation and notification obligations by the Service Recipient

3.1 The Service Recipient is obliged to fulfil their obligation to cooperate as defined in these System Maintenance Terms and Condition and in the Service Certificates. In addition, the Service Recipient will support the Service Provider in the provision of the services to the extent reasonable and necessary, in particular by providing all necessary information. If the Service Recipient fails to fulfil their obligations to cooperate in due time or to a sufficient extent, the Service Provider will be released from its obligation to provide the contractually agreed services until the obligations to cooperate have been fulfilled. In addition, the execution deadline and performance terms for the Service Provider will be extended by the time the Service Recipient is in delay with the fulfilment of its obligations to cooperate, plus a reasonable restart period.

In particular, the Service Recipient's obligations to cooperate are as follows:

- The Service Recipient must designate suitable contact persons for themselves or for their Service Recipient.
- The Service Recipient must make computing times available if this is necessary for the performance of the agreed services.

3.2 To the extent that the Service Provider provides services under this agreement by way of remote data transmission techniques, the Service Recipient will provide suitable devices and programs ready for operation and maintain them.

3.3 During the term of the agreement, the Service Recipient will immediately notify the Service Provider of all circumstances known to them which deviate from the operating conditions specified by the Manufacturer.

3.4 In particular, such information to be provided by the Service Recipient includes employee information (*Mitarbeiterauskünfte*), operating and logbook protocols, hard copies, real test data for purposes of testing, machine and computer capacity, potential monitoring.

3.5 Upon request, the Service Recipient will provide the Service Provider with the information necessary to determine the service obligation and will support the Service Provider in the event of potential recourse.

3.6 Where additional services of the Service Provider become necessary due to the breach of the obligation to cooperate, the Service Provider may provide these services against additional remuneration.

4 Remuneration

4.1 The Service fees are stated in the Service Certificates.

The remuneration for the agreed services are calculated according to the total value of the devices falling under the Service Certificates and the term of the agreement.

4.2 Service fees will be will be invoiced for twelve (12) months in advance unless agreed otherwise.

4.3 System support services that go beyond the agreed scope of services to be paid for in advance will be invoiced separately by the Service Provider. Invoicing of these services will take place after the provision of the services.

4.4 Invoices are due and payable within ten (10) calendar days of the invoice date, unless otherwise agreed.

4.5 If the invoice amount is not credited to the respective designated bank account when due, the Service Recipient comes into default of payment. The Service Provider may then charge the statutory default interest and suspend the provision of the Service until the invoice amount has been paid completely.

5 Liability

5.1 The Service Provider is liable without limitation in the event of intent and gross negligence, violation of life, body or health, breach of a guarantee, claims by the Service Recipient under the German Product Liability Act (*Produkthaftungsgesetz*) and in cases of mandatory statutory liability (e.g. German Product Safety Act, *Produktsicherheitsgesetz*).

5.2 In case of simple negligence, the Service Provider shall only be liable in the event of a breach of material contractual obligations (*Vertragswesentliche Pflichten*). In these cases, liability is limited to the amount of the foreseeable damage typically to be expected in similar agreement of the same type. A material contractual obligation is an obligation which is essential for the achievement of the purpose of the contract or the fulfilment of which makes the proper execution of the contract possible in the first place and on the fulfilment of which the service recipient may regularly rely. The foreseeable, contract-typical damage includes the damages which are typically to be expected to occur in the course of the usual course of damages.

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- 5.3 In the cases mentioned in Section 6, the parties assume that the foreseeable, contract-typical damage are the amounts paid by the Service Recipient to the Service Provider for the services of the system in which the damage occurred in the twelve (12) months preceding the event giving rise to the damage.
- 5.4 In all other cases any liability of the Service Provider is excluded.
- 5.5 In the cases of Section 6, the statutory limitation period is applicable. In all other cases, the Service Recipient's claims for damages shall become statute-barred within twelve (12) months of becoming known, but no later than ten (10) years after their occurrence.
- 5.6 The aforementioned liability limitations shall also apply in favour of legal representatives and employees.
- 5.7 The Product liability shall in principle remain with the manufacturer.

6 Third party rights

- 6.1 The Service Provider assures that the use of the services under this agreement is free of third-party rights. The Service Provider will indemnify the Service Recipient against claims of third parties including the costs of legal defence according to the German Lawyers' Compensation Act (*Rechtsanwaltsvergütungsgesetz*, RVG). The indemnification requires that
- 6.1.1 the service recipient notifies the Service Provider promptly in writing of any claim,
- 6.1.2 the Service Recipient does not take any relevant legal action against the third party, in particular does not make an out-of-court settlement, issue an acknowledgement or take any other similar action without the written consent of the Service Provider,
- 6.1.3 the Service Recipient assists the Service Provider in a legal defence against the third party to the extent necessary, in particular by providing information, and
- 6.1.4 the Service Recipient allows the Service Provider to determine and implement the legal defence strategy, in particular by selecting lawyers and drafting legal documents (*Schriftsatz*). For this purpose, the service recipient will give the necessary declarations and grant powers of attorney. The Service Provider will give due consideration to the legitimate interests of the service recipient in the legal defence.
- 6.2 In the event of conflicting rights of third parties, the Service Provider will make reasonable efforts at its own expense to ensure that the Service Recipient will be able to continue using the Services. If the Service Provider should not be able to resolve the conflict, the Service Provider may terminate the contract. Further rights of the Service Recipient remain unaffected.

7 Secrecy and data protection

- 7.1 The information, findings, results, data and documents (hereinafter referred to as "Information subject to secrecy") disclosed to or coming to the knowledge of the other party in the course of the performance of the contract are subject to secrecy, regardless of how they are embodied, the way in which they are disclosed or come to the knowledge of the other party (e.g. also by unencrypted e-mail) or whether they are expressly labelled as being subject to secrecy (e.g. "confidential" or "secret"). This includes in particular:
- Know-how, industrial property rights, source code and other intellectual property or other work results which are disclosed within the scope of the agreement and/or its performance,
 - information which is not publicly accessible and which the respective party obtains in the course of the agreement and/or its performance.
 - The parties undertake to keep the information subject to secrecy as a business secret in the meaning German Business Trade Secrets Act (*Geschäftsgeheimnisgesetz*, GeschGehG) and to use it only for the purposes of this agreement and its performance and only within the limits stipulated in this agreement. The internal disclosure of such information shall be limited to the extent necessary for the performance of the contract ("need-to-know").
- 7.2 The parties are obliged to take all the necessary measures to prevent information subject to secrecy from becoming accessible to third parties.
- 7.3 The parties are obliged to ensure that their employees and persons who may come into knowledge of the Information subject to secrecy are obliged to maintain confidentiality in accordance with the present regulations. To the extent permitted by law, the employees of the respective party shall be subject to these obligations even for the time after they leave the company.
- 7.4 The obligation to maintain secrecy and not to exploit the information subject to secrecy shall not apply if the information

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- was verifiably known to the respective party prior to the disclosure, or
- as known or generally accessible to the public prior to the disclosure or becomes known after the disclosure through no fault of the respective party, or
- is similar to the information disclosed or made available to the respective party by an authorised third party at any time.

- 7.5 The obligation to maintain secrecy will remain in force for a period of three (3) years after the end of the term of the agreement, regardless of the type of termination.
- 7.6 Authorised third parties will be obliged by the parties to comply with the statutory confidentiality and data protection provisions.
- 7.7 The personal data provided by the parties under the agreement, in particular contact data (such as telephone number, fax number, e-mail address), will be processed by the respective other party for the purpose of providing and performing the services. The parties are obliged to share without undue delay the information provided from time to time with their employees in accordance with Artt. 13, 14 General Data Protection Regulation (GDPR).
- 7.8 To the extent that the services of the Service Provider is commissioned data processing pursuant to Art. 28 GDPR, the Parties will enter into a separate data processing agreement.

8 Term and Termination

- 8.1 The initial term of a Service Certificate is stated in the Service Certificate. After the initial term, the term of the Service Certificate will renew for successive terms of one (1) year each unless either party provides notice to the other party at least three months prior to end of the applicable term. In case the Service Provider increases the applicable conditions, the Service Recipient may terminate the agreement for cause. This termination right must be exercised within 30 days of receipt of the invoice, otherwise the increase will be deemed to have been accepted.
- 8.2 Notices of termination must be made in writing.
- 8.3 The right of both parties to terminate for good cause remains unaffected.
- 8.4 In case of upgrades or retrofits, the Service Provider's service obligation will begin on the date of installation at the Service Recipient's premises.

9 Modifications to the System Maintenance Terms and Conditions

- 9.1 The Service Provider reserves the right to change these System Maintenance Terms and Conditions at four (4) weeks' notice.
- 9.2 The Service Recipient will be explicitly informed that the respective amendment will become subject of the existing agreement between the System Maintenance Conditions and the Service Recipient on the basis of these Software Maintenance Conditions, unless the Service Recipient will object to this amendment by giving notice within a period of four weeks from the notification of the amendment. In the event the service recipient objects, either party may terminate the agreement by giving four weeks' notice.

10 General Provisions and Severability Clause

- 10.1 No side agreements exist for this agreement.
- 10.2 Any amendments and supplements to this agreement must be made in writing. The requirement for the written form cannot be waived.
- 10.3 Should any provision of this agreement be determined invalid or unenforceable either in whole or in part or become invalid or unenforceable due to changes in the law after the conclusion of the agreement, the remaining provisions of the agreement and the validity of the agreement as a whole will remain unaffected.

11 Applicable law / Court of Jurisdiction

- 11.1 This agreement is exclusively governed by German law.
- 11.2 The agreed court of jurisdiction is Munich.

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