



## **Terms and Conditions for the Maintenance of FX Series Software Products**

### ***I. Subject of the Agreement***

- 1) CAD Schroer (hereinafter referred to as CSG) provides maintenance services for software products in accordance with the following contractual terms. These contractual terms do not apply to consumers. With respect to proprietary CSG software products, CSG only provides maintenance services for entire installations.
- 2) The software products to be maintained, the contractual term of the maintenance services, as well as the maintenance fees due, are set out in detail in the Customer's invoice. The maintenance services shall cover the last and penultimate program versions released by the licensor and licensed to the Customer in its updated version (major version and last update of previous major version).
- 3) A software update within the meaning of these terms and conditions is a standard new release of the program developed to correct and/or avoid faults.
- 4) A new software version within the meaning of these terms and conditions is a standard newly developed version of the program

that is labelled as such and features better performance and new functions compared to the previous version of the software product.

### ***II. Maintenance services provided under this agreement***

CSG will provide the maintenance services as set out below:

- 1) Support in case of malfunctions  
Reproducible problems diagnosed by the respective software manufacturer in the latest software version will be, to the extent possible, eliminated or corrected through a work-around solution. A software product is considered to be defective or malfunctioning within the meaning of this agreement if the contractual software product deviates from the applicable functional and performance characteristics set out in the product documentation (i.e. User Manual or Datasheet) within the scope of the agreed warranty in the software license agreement terms and conditions. In order for CSG to reproduce the software problem, the Customer shall provide CSG with a brief and clear problem description or example in electronic format (e.g. by e-mail or via the eSERVICES Portal). CSG

- will pass the example on to the relevant development department.
- 2) Online support  
In the event of software faults or malfunctions, CSG will provide online support to the Customer via the CSG eSERVICES portal.
  - 3) Remote Support  
If necessary, support in case of malfunctions can also be provided by so-called remote support. In this case it is necessary to conclude a Data Processing Agreement within the meaning of Art. 32 DSGVO.
  - 4) Delivery of software updates  
(Definition see section I.3) Any updates for software products listed on the Customer's invoice will be made available to the Customer for use in accordance with the license terms under section V as soon as they have been developed and released.
  - 5) Delivery of new software versions  
(Definition see I.4) Any new software versions for software products listed on the Customer's invoice will be made available to the Customer for use in accordance with the license terms under section V as soon as they have been developed and released.
  - 6) Program documentation  
CSG will update and/or adjust the program documentation for the software updates and new versions made available to the Customer, and make the updated program documentation available to the Customer for use in accordance with the license terms under section V.
  - 7) Moving software to a different computer (node-locked-licenses)  
FX series software could be provided with a node locked license, meaning that the software can only be used on the individual computer specified in the license file. CSG grants Maintenance customers with a node locked license the right to "move" their software once a year during the maintenance period, provided that the software is uninstalled from the computer on which it was previously used.
  - 8) Change of License Server (floating licenses)  
Concerning floating licenses CSG grants Maintenance customers the right to change the license server once a year during the maintenance period, provided that the software is uninstalled from the license server on which it was previously used.
- III. Maintenance services not provided under these terms and conditions**
- 1) Should the Customer request services not provided under these terms and conditions, CSG will prepare an appropriate quotation for the Customer.
  - 2) Examples of such additional fee-bearing services are:
    - a) maintenance services in connection with interface problems with products not delivered by CSG;
    - b) maintenance services made necessary as a consequence of improper use or modification of the software by the Customer;
    - c) restoration of customer data after reinstallation or reconfiguration of the Customer's application software.
- IV. Obligations of the Customer**
- The Customer shall establish the legal, organisational and technical framework for the provision of services by CSG and shall cooperate to the extent necessary. Amongst other things, this means in particular that:
- 1) Any maintenance of software products shall require proof of a valid license for the software to be maintained.
  - 2) Conditions meeting the requirements of the

- system manufacturers must be established and maintained at the installation site. Any computer hardware configurations, e.g. input and output devices, minimum memory capacity, and the capability to download the software necessary to carry out diagnostic and other services, must be provided.
- 3) In the event that CSG decides in exceptional cases that the maintenance service has to be performed at the Customer's site, the Customer shall grant CSG service personnel unlimited and unimpeded access to the software products. The Customer shall permit, where possible, use of the necessary computer systems free of charge to facilitate the necessary maintenance work. In addition, the Customer shall provide CSG service personnel with sufficient working space, electrical power, storage space for spare parts, documents etc. to the extent required. One of the Customer's employees or a person designated by the Customer shall always be present at the product installation site during the maintenance work.
  - 4) The Customer shall designate a qualified employee (system administrator) who is responsible for the system and is authorized to make and receive solely technical representations to/from CSG concerning the maintenance of contractual products.
  - 5) The Customer shall immediately install and use the latest or previous software update in addition to the latest software version on its computer system or allow this software to be installed. The Customer shall be responsible for, and implement free of charge, all changes or additions to the hardware that may become necessary and adapt as necessary any software products not subject to a maintenance agreement with CSG. Where maintenance services are provided by CSG, any additional costs due to a failure by the Customer to immediately install new software updates and/or new software versions shall be borne by the Customer. At least one copy of each software product shall be made by the Customer for backup purposes immediately after delivery of a software update and/or new software version.
  - 6) During the maintenance work, the Customer shall remove all products not delivered by CSG that are not subject to a maintenance agreement with CSG, if CSG believes or suspects such products may have a causal connection to the fault requiring maintenance work.
- V. *Rights in software updates, new software versions and associated program documentation***
- 1) All software updates, new software versions and associated documentation licensed to the Customer are protected by industrial property rights attributed to CSG and/or third-party licensors.
  - 2) CSG's Software License Agreement Terms and Conditions shall apply to all software updates and new software versions of CSG's own software.
- VI. *Implementation and conditions of maintenance services***
- 1) Any maintenance work shall and may only be carried out by CSG service personnel or by third parties contracted by CSG for that purpose.
  - 2) Reports of malfunctions can be submitted via the eSERVICES portal at any time. Maintenance services will generally only be provided during normal working hours (08:00 to 17:00 Monday to Friday, excluding public and bank holidays).
  - 3) CSG will endeavour to fix any malfunctions as quickly as possible.
- VII. *Remuneration and payment terms***
- 1) Maintenance fees are based on the applicable maintenance price list.
  - 2) Maintenance fees will be invoiced in

advance for one year at a time. The maintenance fees plus statutory VAT are payable without deduction within 14 days from the date of the invoice unless otherwise agreed.

- 3) No payment shall be deemed to have been made until CSG can access the funds. Should the Customer fail to meet the payment terms, the Customer shall pay interest on the respective outstanding balance at a rate of 9% above the base rate in accordance with Sect. 247 BGB. If the Customer's cheques cannot be redeemed, if the Customer discontinues payments, or if CSG becomes aware of circumstances that cast doubt on the Customer's creditworthiness, CSG shall have the right to demand payment of the entire outstanding debt and demand payment in advance, as well as the provision of security.
- 4) The Customer may only offset or withhold payments of maintenance fees if any counter claims have been conclusively upheld by a court of law or are uncontested, unless such counter claims arise from the same contractual relationship.

### ***VIII. Warranty and liability***

- 1) CSG is responsible for properly carrying out the contractual maintenance services in accordance with the relevant statutory provisions. Where CSG's obligation is deemed not to have been met, CSG shall first be granted the opportunity to provide subsequent services to correct any issues within an appropriate time period. A maximum of three attempts at providing such corrective services shall be possible.
- 2) Should CSG fail to meet its maintenance service obligations in relation to significant defects within an appropriate period, the Customer may either terminate the contract after expiry of that period or reduce the maintenance fees for the defective products.

- 3) Any claims for damages by the Customer, for whatever reason, shall be inadmissible, except in cases of wilful intent, gross negligence, injury to life, limb or health, infringement of a guarantee pursuant to Sect. 444 BGB, incapacity or violation of material contractual duties. However, any claims for damages based on a violation of material contractual duties shall be limited to foreseeable damages typical of the contract, unless CSG is liable due to wilful intent, gross negligence, injury to life, limb or health or an infringement of a guarantee pursuant to Sect. 444 BGB. The above provisions do not constitute a change of the burden of proof to the detriment of the Customer.
- 4) CSG shall only be liable for the retrieval of data if the Customer has ensured that this data can be reproduced at a reasonable expense from a Customer backup available in electronic format.

### ***IX. Term***

- 1) By paying the annual maintenance fee, the Customer is entitled to software maintenance services over a 12-month period. The maintenance services shall commence on the date set out in the Customer's invoice. CSG reserves the right to issue the Customer with a quotation for the renewal of the maintenance service entitlement for a further 12 months, in time before the current entitlement expires.

### ***X. Other provisions***

- 1) The Customer may not assign the rights arising from this maintenance agreement without the prior written approval by CSG.
- 2) These Terms and Conditions constitute the entire agreement between the parties with respect to maintenance services. Any changes and supplements must be made in writing to be effective.
- 3) For proprietary CSG software products CSG's current Software License Agreement (available online at [www.cad-schroer.com](http://www.cad-schroer.com)) shall apply. In all other circumstances,

CSG's General Terms and Conditions shall apply.

- 4) This agreement is governed by the laws of the Federal Republic of Germany.
- 5) Should one of the above provisions be or become invalid or unenforceable, this shall not affect the validity of all other provisions.