

Apros[®] Maintenance Agreement Terms

These Maintenance Agreement Terms, hereinafter "Maintenance Terms", are applicable to the maintenance supplied by the Distributor, hereinafter called "Licensor", to the End User, hereinafter called "Licensee", with regard to Software.

Subject to the Procurement Documents (of which these Maintenance Terms constitute a part), Licensor agrees to maintain Software delivered in accordance with the Procurement Documents and Licensee agrees to purchase maintenance from Licensor.

Scope of Maintenance

Correction of software failures: Licensor shall make experts available for the prompt correction of Software failures which arise during the validity of these Maintenance Terms. Instead of repairing a Software failure, Licensor has the right to propose a temporary work-around solution, allowing Licensee to continue his operations. If Licensor is not able to propose a work-around solution, the failure is corrected in a new release or in a new version of Software and shipped to Licensee without undue delay. Software failures without significant impact on Licensee's operations will be recorded in Licensor's Software failure database for later correction in a new version or release of Software. Maintenance services shall be provided as remote support services. Licensor shall make personnel available for advice and trouble-shooting by phone. Visiting the Licensee's site, training and consulting services may be provided by Licensor against separate fee.

Information: Licensor shall inform and keep Licensee informed of further development of Software, new releases of Software, new versions and related products.

Licensee shall promptly notify Licensor of any Software failure that is subject to Licensor's performance according to the Procurement Documents.

Documentation: Licensor shall make available to Licensee new updates of documentation related to Software. Unless otherwise agreed, Licensee will receive 1 (one) copy of updated documentation. Copyright and other intellectual property rights to such documentation shall belong to and remain with Licensor or with a third party, e.g. a principal or a subcontractor of Licensor.

New releases and versions: Licensor shall, upon Licensee's request, provide Licensee with new releases and versions of Software. New releases are provided on supported new operation system versions. New releases and versions of Software being "delta enhancements" of such magnitude, that the release or version will get a new part number, shall only be available upon separate agreement and fee. Further, computer operating system upgrades of old Software versions shall also only be available if separately agreed upon and against separate fee.

LICENSOR SHALL BE UNDER NO OBLIGATION TO REPAIR A REPORTED SOFTWARE FAILURE, IF IT IS DUE TO UNAUTHORISED MODIFICATION OF SOFTWARE AND/OR HARDWARE, MISUSE, LACK OF HARDWARE MAINTENANCE, OR ABNORMAL CONDITIONS OR OPERATIONS.

Maintenance Fee

Licensor shall have the right to increase the Maintenance Fee by giving Licensee a written notice thereof 90 (ninety) days prior to the effective date of the price increase, at the latest.

Duration and Termination

Subject to Licensee paying the Maintenance Fee, the obligation of Licensor to provide Licensee with maintenance services shall commence upon Software delivery. The maintenance services shall continue until terminated in accordance with the below.

Licensor has the right to terminate the maintenance services by giving Licensee a written notice thereof 30 (thirty) days prior to the desired date of termination, at the latest, in any of the following events:

- Licensee neglects to adhere to any of its obligations under Procurement Documents, or
- Licensee fails to pay any payments due hereunder.

Licensor may terminate the maintenance services immediately upon written notice if Licensee is filed for insolvency or bankruptcy.

Either party has the right to terminate the agreement for maintenance services by giving the other party a written notice thereof 60 (sixty) days prior to the desired date of termination, at the latest.

Other Terms and Conditions

The terms and conditions set forth in the License Agreement Terms shall apply also to the subject matter hereof, unless explicitly otherwise specified in these Maintenance Terms.