# COMtrexx Maintenance - GTC

General Terms and Conditions for the COMtrexx Maintenance Services

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## 1. Scope and contracting parties

1.1 These General Terms and Conditions "COMtrexx Maintenance - GTC" (hereinafter "GTC") apply to all agreements on the provision of installation-related Maintenance Services ("COMtrexx Maintenance - IMS Agreement", hereinafter "IMS Agreement") between Auerswald GmbH, Hordorfer Straße 36, 38162 Cremlingen (hereinafter "Auerswald") and business customers (hereinafter "Customer"). Auerswald does not conclude contracts with consumers.

1.2 If the IMS Agreement is concluded through the mediation of an Auerswald Partner, the Auerswald Partner neither becomes a party to the IMS Agreement nor is authorised to receive legal declarations from the Customer addressed to Auerswald (e.g. notices of termination).

1.3 The customer-specific provisions in the IMS Agreement, in particular in the Auerswald quotation, including the contract annexes incorporated into the quotation, take precedence over these GTC. The Customer's general terms and conditions of contract and purchase shall not apply, even if Auerswald provides services without expressly objecting to them.

1.4 These GTC in their current version also apply to all future IMS Agreements between Auerswald and the Customer, even if no further express reference is made to them.

1.5 Auerswald is entitled to amend the IMS Agreement during its term, provided that this does not unreasonably change the balance between performance and

consideration to the Customer's disadvantage. New versions are communicated to the Customer in writing or by email, with the changes highlighted. They become effective if the Customer does not object to the new version in writing within six (6) weeks of receipt of the notice of amendment. The Customer is expressly informed of the consequences of their inaction when the amendments are notified. If the Customer objects to the new version, the contractual relationship continues on the original terms, but may be terminated extraordinarily by Auerswald with three (3) months' notice.

## 2. Subject matter of the contract and scope of services

2.1 Under the IMS Agreement, Auerswald provides the Customer with Maintenance Services for the Customer's COMtrexx system specifically designated in the contract component "COMtrexx Maintenance - System Data/Quotation Form" to the IMS Agreement (hereinafter "COMtrexx system"). The COMtrexx system is subject, uniformly and as a whole (i.e. with all activated user licences), to the Maintenance. The amount of the Maintenance fees depends on the number of users licensed and activated for the COMtrexx system at any given time. If the Customer subsequently purchases additional user licences, the amount of the Maintenance fees also increases automatically. Partial termination of the Maintenance Services in respect of individual users is excluded.

2.2 The subject matter of the IMS Agreement concluded with the Customer is the provision of installation-related Maintenance Services by Auerswald for the Customer's COMtrexx system during the term of the IMS Agreement. The specific scope of services is set out in these GTC and in the current version of the "COMtrexx Maintenance - Specification" (hereinafter "Specification"), which is available on the Auerswald website and becomes part of the IMS Agreement. The agreed Maintenance Services are provided exclusively remotely (where applicable by remote access). Services that go beyond the agreed scope of services, in particular installation or other on-site services, are not the subject of the IMS Agreement.

2.3 The services covered by the contract comprise, in accordance with the current version of the Specification, in particular:

- Provision of updates (firmware and security updates)
- Provision of generally available functional enhancements and optimisations
- Software bug fixes
- Access to online services (COMfortel SoftPhone as well as further administration and monitoring functions)

2.4 The Customer is responsible for installing updates, functional enhancements and optimisations and software bug fixes. Beyond access to the online services, Auerswald does not provide any support services directly to the Customer (cf. para. 5.3).

2.5 Auerswald is entitled to change the Maintenance Services unilaterally, provided that this is objectively reasonable for the Customer and the agreed main contractual obligations are not substantially affected. Such reasonable changes may include, in particular:

- technical improvements and innovations, including the replacement of functions with new, equivalent functions;
- the implementation of solutions to avoid infringing third-party rights;
- changes to implement new or amended legal, regulatory or technical requirements as well as customary market norms and standards.

## 3. Term and termination of the IMS Agreement

3.1 The term of the IMS Agreement begins on the date stated in the quotation or in the IMS Agreement. As a rule, the start of the contract corresponds to the date on which the Customer's initial Maintenance ends, i.e. the initial Maintenance period of 12 months that is an integral part of a Customer's purchase of a new COMtrexx system. The provision of services during the initial Maintenance phase is not the subject of the IMS Agreement with Auerswald.

3.2 The binding initial minimum term of the IMS Agreement is set out in the respective quotation or in the IMS Agreement with the Customer and is one (1), three (3) or five (5) years. After the binding initial minimum term has expired, the term of the IMS Agreement is extended by a further twelve (12) months in each case unless it is terminated by either contracting party by ordinary notice of three (3) months to the end of the respective contract year (for the first time with effect from the expiry of the binding initial minimum term). Ordinary termination before the expiry of the binding initial minimum term is excluded. The automatic extension takes place at the Auerswald Maintenance list prices applicable at the time of the extension.

3.3 If the Customer subsequently purchases additional user licences, the term of the Maintenance Services relating to them corresponds to the term of the IMS Agreement for the remainder of the COMtrexx system. Partial termination of Maintenance Services, e.g. in respect of individual user licences, is excluded.

3.4 The right of both contracting parties to terminate the IMS Agreement extraordinarily without notice for good cause remains unaffected. Good cause exists for Auerswald in particular,

- if the Customer is in default of payment of a not merely insignificant part of the remuneration due for more than four (4) weeks;
- if the Customer uses the COMtrexx system in breach of the rights of use granted by Auerswald;
- if the security, stability, availability or integrity of the Maintenance Services is jeopardised by the Customer's conduct;

– if the Customer breaches material contractual obligations in any other way and does not cease that breach, even after a corresponding request, within the reasonable period set by Auerswald for that purpose.

3.5 If good cause within the meaning of para. 3.4 exists, Auerswald is entitled, at its own discretion, to temporarily suspend the Maintenance Services covered by the contract until the Customer has paid their outstanding liabilities in full or has remedied the good cause. In the event of such a suspension of the provision of services, Auerswald will give reasonable consideration to the Customer's legitimate interests. The Customer's obligation to pay Maintenance fees that have fallen due and Auerswald's right to terminate the IMS Agreement extraordinarily without notice remain unaffected.

3.6 To be effective, every termination must be in written or text form.

## 4. Remuneration and terms of payment

4.1 The amount of the monthly Maintenance fees for a COMtrexx system is calculated by adding up the Maintenance fees per licensed and activated user per month. The amount and due date of the Maintenance fees are set out in the quotation or in the IMS Agreement. Unless otherwise agreed in the quotation or in the IMS Agreement, the Maintenance fees are invoiced to the Customer monthly in advance.

4.2 If additional user licences are purchased during the term of the IMS Agreement, the Maintenance fees for the COMtrexx system increase automatically from the time the new user licences are activated, in line with the Maintenance fees per user valid at the time of the respective licence purchase according to the Auerswald price list.

4.3 Auerswald is further entitled to adjust the amount of the Maintenance fees to its general cost and price development (e.g. in respect of the level of salaries, rents, energy costs, etc.) no more than once per calendar year, subject to a notice period of at least six (6) weeks. To calculate and substantiate the cost and price development, Auerswald may use as a guide, e. g., the development of the consumer price index or the development of the index of average earnings of employees in the IT sector in Germany (or a similar wage cost index). What matters in this respect is the index development since the last price adjustment (or since conclusion of the contract if it is the first price adjustment). If the remuneration increases by more than 10% as a result, the Customer may object to the increase in writing or by email within two (2) weeks of its announcement. If the Customer does not exercise their right of objection, the price adjustment takes effect at the announced time. If the Customer objects in good time, the remuneration remains unchanged; Auerswald reserves the right, however, to terminate the contract by ordinary notice at the earliest possible date. Auerswald will inform the Customer of their right of objection together with the announcement of the price increase.

4.4 All prices are exclusive of value added tax at the applicable statutory rate. Payments are to be made by the Customer without deduction within fourteen (14) calendar days of the invoice date.

4.5 The Customer is only entitled to set-off if their counterclaim is undisputed or has been established with legal effect. The Customer is only entitled to exercise a right of retention to the extent that their counterclaim is undisputed or has been established with legal effect and is based on the same contractual relationship.

## 5. Areas of responsibility and the Customer's duties to cooperate

5.1 As a material contractual obligation, the Customer shall provide the agreed cooperation required to fulfil the contract in good time, properly, in full and free of charge. This includes, in particular, the cooperation services listed in detail in this Art. 5 and in the Specification. The Customer may make use of their Auerswald Partner or another service provider to perform services within their area of responsibility.

5.2 The Customer is obliged to install available updates for their COMtrexx system (e.g. firmware updates) without delay, or to have them installed by their Auerswald Partner. The Customer shall ensure that updates and software bug fixes provided by Auerswald are installed no later than three (3) months after they have been made available. Additional expenses arising from the Customer using an outdated version of the software are to be remunerated to Auerswald according to time and effort at the Auerswald hourly rates generally applicable at the time.

5.3 Support enquiries and fault reports from the Customer are to be submitted to Auerswald exclusively via the Auerswald Partner. The Auerswald Partner is the first point of contact for all support-related enquiries from the Customer and provides 1st Level Support for the COMtrexx system. 2nd Level Support (helpdesk) and 3rd Level Support (development department) are provided by Auerswald exclusively to the Customer's Auerswald Partner. The Customer shall report faults to the Auerswald Partner without delay after discovering them, in a comprehensible form, stating the specific circumstances of their occurrence, their effects and possible causes. Within reason, the Customer shall take all necessary measures to identify, isolate and document the faults.

5.4 The Customer shall provide all necessary documents and information that the Auerswald Partner and/or Auerswald require to diagnose and remedy faults, and shall otherwise support the Auerswald Partner and/or Auerswald to a reasonable extent in analysing and remedying faults, e. g. by following instructions for eliminating or circumventing a fault.

5.5 Where direct remote access by Auerswald to the Customer's COMtrexx system is exceptionally required, the Customer shall provide a corresponding access facility in a technically stable manner and without undue delay; if the Customer refuses or delays its provision, Auerswald is temporarily released from its performance obligations to that extent.

5.6 In connection with the access data provided for the Auerswald online services and for other administration and monitoring functions, the Customer undertakes:

- to treat this access data as strictly confidential and not to pass it on to unauthorised third parties;
- to ensure that administrative access data is accessible only to persons who are authorised to exercise the corresponding rights;
- to block access without delay for persons who no longer work for the Customer;
- to inform Auerswald without delay of any security breach or any unauthorised use of the Auerswald online services.

5.7 The Customer is liable for all actions carried out using their access data, unless they prove that the loss of the access data is attributable to Auerswald.

5.8 If the Customer is in default of providing their cooperation, Auerswald's performance obligations are suspended for the duration of the default, insofar as services cannot be provided without the required cooperation of the Customer, or only with disproportionate additional effort. Any additional expenses incurred by Auerswald as a result of the omitted, delayed or improper fulfilment of duties to cooperate will be invoiced to the Customer according to time and effort at the Auerswald hourly rates generally applicable at the time. Any further claims by Auerswald remain unaffected.

5.9 If the Customer's Auerswald Partner loses their partner status or permanently ceases business operations, the Customer is entitled to look for another authorised Auerswald Partner of their choice themselves. On request, Auerswald will support the Customer in finding a suitable Auerswald Partner. A list of authorised Auerswald Partners is available at www.auerswald.de.

## 6. Confidentiality and data protection

6.1 The contracting parties undertake to maintain secrecy regarding all trade secrets of the other party entrusted to them, made accessible to them or otherwise brought to their attention, to use such confidential information only for the purpose provided for in the contract and not to disclose it to third parties. The parties will grant access to the confidential information only to those employees and subcontractors who are bound to secrecy and who need to know it for the purposes of fulfilling the contract. The Customer's Auerswald Partner is not a third party in this sense.

6.2 The obligation to maintain secrecy does not apply to confidential information that was already known to the recipient beforehand without an obligation to maintain secrecy, or that is or becomes generally known without the recipient being responsible for this, or that is lawfully communicated to the recipient by a third party without an obligation to maintain secrecy, or that has demonstrably been developed independently by the recipient.

6.3 Obligations to maintain secrecy arising from the law in addition to this Art. 6 (e.g. in respect of trade secrets under the German Trade Secrets Act or in respect of personal data under the General Data Protection Regulation (GDPR)) remain unaffected by the above provisions.

6.4 When handling personal data, the parties shall comply at all times with the applicable data protection regulations (in particular the GDPR). As a rule, the provision of services by Auerswald does not require direct access to the Customer's COMtrexx system or to personal data processed therein. Where Auerswald exceptionally obtains (remote) access to the Customer's personal data in the course of providing the Maintenance Services, the terms of the "COMtrexx Maintenance - Data Processing Agreement (DPA)" apply.

## 7. Warranty

7.1 Auerswald warrants that, during the agreed contract term, the Maintenance Services have the characteristics described in these GTC and in the Specification and that no third-party rights preclude their use in accordance with the contract.

7.2 In particular, functional impairments resulting from improper operation of the COMtrexx system by the Customer, from the Customer's system environment or from other circumstances within the Customer's area of responsibility do not constitute a defect. Liability for defects presupposes that the Customer complies with the system requirements and conditions of use specified by Auerswald for the COMtrexx system and does not use the Maintenance Services contrary to the contractual specifications, unless the Customer proves that the defect is independent of this.

7.3 Furthermore, there is no defect in the services covered by the contract:

- in the case of faults caused by telecommunications providers, third-party providers or the Customer's Auerswald Partner;
- in the case of faults based on the Customer's infrastructure, e. g. insufficient internet bandwidth, faulty or missing cabling, incompatible terminals;
- in the case of faults based on unlawful or improper actions by the Customer or by third parties attributable to the Customer;
- in the case of faults based on changes to the COMtrexx system that were not initiated by Auerswald or by a partner authorised by Auerswald;
- in the case of faults resulting from incorrect configuration, operating errors or non-compliance with the documentation by the Customer;
- in the case of faults and defects that exist in a version of the software that does not correspond to the current version available under the Maintenance Services;
- in the case of faults and defects in services that the Auerswald Partner provides on their own responsibility alongside or in addition to the services covered by the contract.

## 8. Liability

8.1 Where services are subject to tenancy law, the statutory strict liability of Auerswald for defects already existing at the time the contract was concluded is excluded in that respect; Auerswald is liable for such defects only in the case of culpable conduct and within the limitations of liability set out below.

8.2 In all other respects, Auerswald provides compensation for damage to property and financial loss as well as for wasted expenditure, regardless of the legal basis, only to the following extent:

- in full in the case of intent and gross negligence and where a guarantee has been assumed;
- in all other cases only in the event of a breach of an obligation material to the contract, without which the achievement of the purpose of the contract would be jeopardised and on the fulfilment of which the Customer may therefore regularly rely (a so-called cardinal obligation), and then limited to compensation for the typical damage foreseeable at the time the contract was concluded, but in any case limited in amount to the maximum liability amount agreed individually in the IMS Agreement and, if no maximum liability amount is defined there, up to the total of the Maintenance fees paid by the Customer in the last 12 months before the damage occurred (extrapolated on the basis of the current monthly fees, where applicable, if the IMS Agreement has not yet existed for 12 months).

8.3 The Customer shall take all necessary and reasonable measures to prevent or limit damage. Auerswald is liable for the restoration of data within the limits of para. 8.2 only to the extent that the Customer has ensured that the data to be archived by them can be reproduced with reasonable effort from data held in electronic form.

8.4 The above limitations of liability also apply for the benefit of the statutory representatives, vicarious agents and employees of Auerswald.

8.5 Statutory liability for damage arising from injury to life, limb or health and liability under the German Product Liability Act remain unaffected by the above provisions.

## 9. Final Provisions

9.1 Auerswald is entitled to transfer its contractual rights and obligations under the IMS Agreement to affiliated companies within the meaning of Sections 15 et seq. of the German Stock Corporation Act (AktG), to Auerswald Partners or to other third parties; the Customer hereby already consents to such a transfer. An assignment or transfer of contractual rights and obligations by the Customer to third parties – including affiliated companies of the Customer within the meaning of Sections 15 et seq. of the German Stock Corporation Act (AktG) – requires the prior written consent of Auerswald. Section 354a of the German Commercial Code (HGB) remains unaffected.

9.2 The Customer undertakes to comply fully with all relevant national and international export regulations and not to use the Maintenance Services in countries for which export bans apply under the applicable export laws.

9.3 Subject to para. 1.5, all amendments and additions to the IMS Agreement must be in writing to be effective. Transmission by email of business letters that have been electronically signed (e.g. by Adobe Sign) or signed and scanned satisfies the contractual written form requirement. The written form requirement can itself only be waived in writing.

9.4 The law of the Federal Republic of Germany applies, excluding the conflict-of-law rules of private international law and excluding the UN Convention on Contracts for the International Sale of Goods. The exclusive place of jurisdiction for all disputes arising in connection with the contract is the registered office of Auerswald.

9.5 Should individual provisions of these GTC or of other contract documents be or become invalid, or should the contract contain a gap, the validity of the remaining provisions shall not be affected. In place of the invalid or missing provision, the contracting parties shall agree a valid replacement provision that comes closest to what they intended economically at the time the contract was concluded.