



Maintenance and Support Terms and Conditions

ACD Elektronik GmbH

Section 1 Scope

- 1.1 These Maintenance and Support Terms and Conditions, in the version applicable at the time the contract is concluded, shall apply to all maintenance and support contracts of ACD Elektronik GmbH, Engelberg 2, 88480 Achstetten (hereinafter "**ACD**") with its customers. These terms and conditions shall only apply if the Customer is a businessperson (Section 14 BGB), a legal entity under public law or a special fund under public law.
- 1.2 A maintenance and support contract consists
- of the content of ACD's offer,
 - the following Maintenance and Support Terms and Conditions and
 - ACD's general terms and conditions of business and delivery.
- Should there be contradictory provisions, these contractual bases shall apply in the aforementioned order. However, individual agreements made with the Customer in specific cases shall always take precedence.
- 1.3 The contractual bases stated in Clause 1.2 shall apply exclusively; ACD shall not recognize any conflicting or deviating terms and conditions of the Customer unless ACD has expressly agreed to the validity of the said terms. These contractual bases shall also apply if ACD confirms the Customer's order and / or executes the Customer's order without objections while aware that the Customer's terms and conditions are contrary to or deviate from these terms and conditions.

Section 2 Subject matter of the contract

The subject matter of the maintenance and support contract is to keep the software (hereinafter "**Software**") of the mobile data recording device (hereinafter "**Device**") purchased by the Customer from ACD up to date. ACD shall provide the following maintenance and support services during the term of the maintenance and support contract:

- Provision of releases for the Software (Clause 2.1);
- Product and application-related support (Clause 2.2).



2.1 ACD shall provide Customer with releases of the Software. Releases are Software versions that eliminate errors of previous versions and/or change and/or improve definable parts of the Software. In particular, releases are not separately offered additional functions of the Software or a new development of the Software with the same or similar functions on a different technological basis. ACD shall provide the releases in the latest program version including installation instructions for the mobile ACD products in the protected download area on ACD's website. ACD grants the customer the right to use the releases of the Software to the extent that the Customer was authorized to use the original Software by the software license agreement entered into with ACD and any extensions of the right of use agreed with ACD. To the extent required for releases, any necessary adjustments to the Devices shall be the responsibility of the Customer at the Customer's expense.

2.2 ACD shall provide support to advise and assist the Customer in the event of application problems arising in connection with the Software. The support hotline shall be available on working days from Monday to Thursday from 8:00 a.m. to 5:00 p.m. and on Friday from 8:00 a.m. to 3:00 p.m. at:

Phone: +49 7392 708-488 or Email: support.technik@acd-elektronik.de

The support hotline is not staffed on weekends or public holidays in the state of Baden-Württemberg.

2.3 ACD is released from its obligation to perform,

- if the Customer does not use the Software on ACD's Devices and/or does not use it under the conditions of use specified by ACD;
- for parts of the Software that have been modified by the Customer's programming work;
- for parts of the Software whose function depends on other programs and/or other software, unless a corresponding maintenance and support agreement also exists between the Customer and ACD for the other programs/software.

Section 3 Obligations of the Customer

Any errors in the Software must be reported to ACD's by telephone or email (see Clause 2.2 above) immediately once they become known. In this context, the Customer shall take the necessary measures within the bounds of what is reasonable to determine, limit and document the defects or other deficiencies. The Customer shall - to the extent necessary - allow ACD's maintenance personnel, at their discretion, access to the Devices on which the Software is installed. The Customer shall designate a competent employee as the contact person for ACD's care personnel.

Section 4 Claims for defects

4.1 ACD guarantees the agreed quality of the services obtained by the Customer in accordance with the maintenance and support contract and that the transfer of agreed rights of use of the Customer to the releases does not conflict with any rights of third parties.



- 4.2 If a warranty case exists, the Customer must first set ACD a reasonable deadline to produce the contractual condition before asserting a right for a reduction in price or contract termination. Excluded from this obligation are those cases for which the exercise of warranty rights without setting a special deadline is permissible due to statutory provisions (e.g., because subsequent performance is impossible, unreasonable or has been refused by ACD).
- 4.3 Claims against ACD due to functional impairments or performance disruptions that are based on the Customer's breach of duties to cooperate or on other circumstances for which the Customer is responsible (for example, improper installation or modification of the Software, its use for other purposes) are excluded.

Section 5 Customer's liability for damages

- 5.1 ACD shall be liable for intentional or grossly negligent actions or omissions on the part from ACD, its legal representatives or vicarious agents in accordance with the statutory provisions.
- 5.2 In the event of ordinary negligence, ACD shall only be liable for damages attributable to material breaches of duty which jeopardize the achievement of the purpose of the contract, or to the breach of duties the fulfillment of which is a prerequisite for the proper performance of the contract. The liability is limited to the contract-typical, foreseeable damage. This applies to all claims for damages, irrespective of their legal basis, including claims in tort.
- 5.3 The limitations of liability shall not apply in cases of mandatory legal liability (for example under the German Product Liability Act "Produkthaftungsgesetz"), for damages due to injury to life, limb or health, or for damages covered by a warranty granted by ACD.

Section 6 Term of contract, termination

- 6.1 The term of the maintenance and support contract begins on the day on which the Device, the Software for which is the subject of the maintenance and support contract, is delivered to the Customer. To the extent that the maintenance and support contract is concluded for a Device that has already been delivered, its term shall commence upon receipt of ACD's order confirmation by the Customer.
- 6.2 The initial term of the maintenance and support contract is determined by ACD's offer. If no term is specified there, the term shall be 12 months. The maintenance and support contract shall be extended beyond the initial term for a further twelve months in each case if it is not terminated with six weeks' notice before expiry.
- 6.3 The right to terminate for cause remains unaffected. The discontinuation of the use of the Device for the Software the maintenance and support contract is concluded, regardless of the reason, shall not in itself justify termination for cause.
- 6.4 Any termination must be in writing.



Section 7 Prices, terms of payment

- 7.1 The payment owed by the Customer shall be due in advance for each contract year.
- 7.2 The Customer shall only be entitled to rights of offsetting or retention to the extent that its claim has been legally established or is undisputed. In the event of any defects in ACD's performance, the Customer's rights to assert claims against ACD shall remain unaffected.

Section 8 Other

- 8.1 Should individual provisions of these Maintenance and Support Terms and Conditions be or become void or ineffective in whole or in part, this shall not affect the validity of the remaining provisions. In such a case, the contracting parties shall be obliged to replace the void or invalid provision with a valid provision that approximates the economic intent of the invalid provision as closely as possible. The same applies in the event of a contractual gap within these Maintenance and Support Terms and Conditions.
- 8.2 This maintenance and support contract and all legal relations between ACD and the Customer shall be governed by the laws of the Federal Republic of Germany, excluding international common law, in particular the UN Convention on Contracts for the International Sale of Goods (CISG).
- 8.3 If the Customer is a merchant within the meaning of the German Commercial Code ("Handelsgesetzbuch"), a legal entity under public law or a special fund under public law, the exclusive - also international - place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be ACD's place of business in Ulm. However, ACD is also entitled to take legal action at the Customer's usual place of jurisdiction.

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