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Special Conditions for Software Maintenance (smart CONTROL)

§ 1 General

1. The Customer has acquired a smart CONTROL system (hereinafter referred to as "smart CONTROL") from EWIKON Heißkanalsysteme GmbH (hereinafter referred to as "EWIKON") on the basis of an individual contract. An essential component of smart CONTROL is a modular software consisting of a basic module and various optional additional modules. The software modules acquired by the Customer are specified in more detail in the individual contract.

2. After separate order by the Customer, EWIKON shall provide maintenance services for the software modules acquired by the Customer in accordance with these Special Conditions for Software Maintenance.

§ 2 Subject Matter of the Maintenance Services

1. The maintenance services according to §§ 3 to 6 refer to the software modules acquired by the Customer, including the user documentation (hereinafter collectively referred to as "**Contractual Software**"). The optional software module "virtual RHEOLOGY screw" is excluded from the maintenance services.

2. EWIKON shall provide the maintenance services for the respective current version of the Contractual Software as well as for the respective previous version, whereby the respective previous version shall be maintained for a maximum period of 6 months from the date of the provision of the current version.

§ 3 Hotline Service

1. EWIKON shall provide a hotline for the Customer to receive error messages and to advise the Customer on questions regarding the application of the Contractual Software. The hotline can be reached via:

    E-mail: smartcontrol@ewikon.com
    Telephone: 06451-501-456

2. The hotline is available to the Customer during the service hours specified below:

    Monday to Friday from 8.00 a.m. to 4.00 p.m. (CET)
    (excluding national holidays and regional holidays at EWIKON's seat)

    The hotline service is limited to two hours per month for application questions. EWIKON is entitled to charge for any additional use separately at the applicable hourly rates.

§ 4 Error Handling

1. EWIKON shall - as far as possible - provide the Customer with assistance in eliminating the error within the service times specified in § 3 Para. 2. Alternatively, EWIKON may eliminate the error by providing a new version in the interval specified in § 5 Para. 1. However, the Customer is not

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entitled to demand the provision of a new version before the regular provision date. The provision of a new version by EWIKON as well as the installation to be carried out by the Customer are described in more detail in § 5 Paragraph 2.

2. On-site error handling is not owed within the lump sum remuneration in accordance with § 10 Para. 1. If the Customer requests on-site error handling, this shall be deemed an "additional service" within the meaning of § 7, which shall be ordered and remunerated separately.

3. If an error in the Contractual Software reported by the Customer does not exist, EWIKON shall be entitled to invoice the expenditure caused by this separately at EWIKON's current hourly rates.

4. Errors which have arisen due to the fact that the Customer uses the Contractual Software in breach of the contract or changes it without authorisation shall be excluded from the error handling.

§ 5 Provision of new Versions

1. EWIKON shall provide the Customer with the current version of the Contractual Software released by EWIKON. A new version is understood to mean in particular updates, upgrades or other actualisations of the Contractual Software. EWIKON assumes that new versions will generally be made available every six months. A transfer of the source code of the new version to the Customer is not owed.

2. The provision of a new version shall usually be made as a file for download. EWIKON shall provide the Customer with the information required for the download. The Customer shall be responsible for the correct and proper installation of the new version. At the request of the Customer, EWIKON shall support the Customer in this against separate remuneration.

3. If EWIKON has made specific modifications to the Contractual Software according to the Customer's requirements, EWIKON shall also make these - insofar as technically possible - in the new version against separate remuneration.

§ 6 Documentation

Upon provision of new versions, EWIKON shall provide the Customer with corresponding updated user documentation. This documentation shall be made available to the Customer either in paper or electronic form, at EWIKON's discretion.

§ 7 Additional Services

Subject to technical and operational possibilities, EWIKON shall, at the request of the Customer and for additional remuneration, provide services which are related to the Contractual Software and are not included in the services described in §§ 3 to 6. This shall apply in particular to

- services provided by EWIKON at the Customer's premises (§ 4 Para. 2);
- services to the Contractual Software which become necessary due to use in breach of the contract or unauthorised modification of the Contractual Software by the Customer (§ 4 Para. 4);
- adaptations of the Contractual Software to new or modified equipment, tools or operating systems of the Customer.

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§ 8 Rights of Use

Ewikon grants the Customer the rights of use agreed in the "Special Conditions for the Supply of smart CONTROL" for the new versions provided and the related user documentation.

§ 9 Obligations of the Customer to cooperate

The Customer shall be obliged to take over new versions of the Contractual Software provided by EWIKON in accordance with § 5 and to install them within three months of provision. The Customer is advised that maintenance services can only be provided to a limited extent if he fails to do so (see § 2 Para. 2).

§ 10 Remuneration, Terms of Payment

1. The maintenance services to be provided pursuant to §§ 3 to 6 shall be remunerated with an annual lump sum, the amount of which shall be determined by individual contract.
   The lump sum shall be paid annually in advance and shall be due at the beginning of each calendar year. If the maintenance services begin during the course of the year, a pro rata lump sum shall be paid for the remainder of the year, which shall become due at the beginning of the maintenance services.

2. Additional services (§ 7) shall be remunerated separately by the Customer at EWIKON's current hourly rates. Travel and accommodation costs shall be reimbursed separately according to the expenses incurred.
   The remuneration shall be invoiced after performance of the respective individual order and shall be due for payment within 30 days of the invoice date.

§ 11 Liability for Defects in Quality and Title

1. EWIKON warrants that the new versions provided to the Customer within the scope of the software maintenance are not afflicted with defects which significantly impair the functionality of the Contractual Software. Furthermore, EWIKON warrants that the Customer can use the new versions without infringing the rights of third parties.

2. The limitation period for claims for defects is 12 months and begins with the respective delivery of a new version.

§ 12 Other Liability

EWIKON shall be liable for damages incurred by the Customer in connection with the provision of the maintenance services as follows:

1. EWIKON shall be liable in accordance with the statutory provisions in the event of

   - intent and gross negligence,
   - for injury to life, body and health,
   - according to the regulations of the product liability law as well as
   - in the case of defects which EWIKON has fraudulently concealed or the absence of which EWIKON has guaranteed.

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2. In the event of a breach of an obligation which is essential for the achievement of the purpose of the contract and which EWIKON has breached neither intentionally nor through gross negligence, EWIKON shall be liable for the foreseeable damage typical for the contract. The parties agree that the contract-typical foreseeable damage does not exceed an amount of EUR 20,000.

3. EWIKON shall not be liable for any further damages.

§ 13 Term of the Contract, Termination

1. The software maintenance contract shall come into force with the ordering of the maintenance services and shall run for an indefinite period. It may be terminated with three months' notice to the end of any calendar month.

2. The right to extraordinary termination for good cause remains unaffected.

3. Any termination must be in text form at least.

§ 14 Miscellaneous

1. Amendments and supplements to these Special Conditions for Software Maintenance must be made in text form.

2. General terms and conditions of the Customer will not apply.

3. The Special Conditions for Software Maintenance and all legal relationships between the parties shall be governed by German law to the exclusion of the UN Convention on Contracts for the International Sale of Goods.

4. The place of jurisdiction shall be the court responsible for EWIKON's registered office. EWIKON shall, however, also be entitled to sue the Customer at the court responsible for the Customer's registered office.

5. Should any provision of these Special Conditions for Software Maintenance be invalid, this shall not affect the validity of the remaining provisions. In this case, the parties shall replace the invalid provision with a valid provision that comes closest in economic terms to the intended purpose of the invalid provision.

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Ewikon Heißkanalsysteme GmbH
Siegener Straße 35 ● 35066 Frankenberg
Tel.: (+49) 6451 / 5010 ● Fax: (+49) 6451 / 501202
E-Mail: info@ewikon.com ● www.ewikon.com

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