

General Terms and Conditions of Fritz Gyger AG for Support and Maintenance



1. SCOPE OF APPLICATION

- 1.1. These General Terms and Conditions (the "GTC") shall apply to support and maintenance services on Products of Fritz Gyger AG, which has its registered office at Gwatt (Thun), Switzerland ("FGAG") as well as to all other related acts and omissions of FGAG, unless explicitly agreed otherwise in writing by FGAG and the Customer (each a "Party" and together the "Parties"). Products as referred to in these GTC also include parts of Products such as software and hardware components, spare parts and consumables.
- 1.2. All sales or deliveries of Products by FGAG to the Customer shall be governed by the General Terms and Conditions of Sale of FGAG (the "GTC of Sale").

2. QUOTES, ACCEPTANCE AND COMPONENTS OF THE SERVICE CONTRACT

- 2.1. Unless otherwise stipulated in FGAG's quote for Products (the "Quote"), the Quote will be valid for 30 days from the date of the Quote and will expire thereafter without further notice.
- 2.2. FGAG's Quote and all other related documents provided to the Customer by FGAG may neither be passed on to third parties nor copied unless FGAG has given its explicit written consent.
- 2.3. The written acceptance of the Quote by the Customer constitutes a service contract between the Parties (the "Service Contract"). In principle, FGAG will then send the Customer an order confirmation. Its content is binding on the Customer unless the Customer objects to the order confirmation in writing within 5 calendar days of receipt.
- 2.4. The Service Contract consists of the following documents:
 - the Quote from FGAG accepted by the Customer;
 - these GTC;
 - FGAG's official price list (the "Price List"); and
 - the data processing agreement, if applicable.
- 2.5. In the event of contradictions between the various components of the Service Contract, the order of precedence pursuant to Section 2.4 above will apply, i.e. the Quote will take precedence over these GTC, unless explicitly agreed otherwise between the Parties. Notwithstanding the preceding sentence, Sections 3.15, 5, 6, 11 and 14 of these GTC will always take precedence over the provisions of the Quote and all other components of the Service Contract.
- 2.6. Each Party warrants that it has all the necessary powers and authorizations to enter into the Service Contract and that the conclusion of the Service Contract does not breach any law or agreement by which it is bound.
- 2.7. The Service Contract constitutes the entire legal relationship between the Parties in relation to the support and maintenance work to be completed by FGAG and all rights and obligations, acts and omissions of the Parties in this respect. However, any *End User License Agreement* already concluded for the Products shall continue to apply. Any agreements that differ from the Service Contract must be made in writing, and the Customer's General Terms and Conditions shall only be binding on FGAG if FGAG has expressly accepted them in writing.
- 2.8. The Parties may conclude multiple Service Contracts for several Products. The validity of each individual Service Contract is independent of any other Service Contracts.

3. SERVICES

- 3.1. The scope and content of the services to be provided by FGAG for the support and maintenance of the Products concerned are set out in the relevant Quote and other parts of the Service Contract (the "Services"). In principle, the Customer can choose between different service level agreements.
- 3.2. The service level agreement selected by the Customer in the Quote (the "Service Level Agreement") applies to all Products covered by the corresponding Service Contract, unless otherwise agreed in writing by the Parties.
- 3.3. Any change to the agreed Services requested by the Customer, in particular a different Service Level Agreement, must be agreed between the Parties in writing. FGAG has no obligation to comply with a change requested by the Customer.
- 3.4. In the event of a problem with one or more Products covered by the Service Contract (the "Incident"), the Customer shall be entitled to send a corresponding request to FGAG in accordance with the provisions of the Service Contract (the "Request"). Unless otherwise agreed in the applicable Service Level Agreement, Requests must be sent by the Customer to the telephone number or e-mail address defined by FGAG. Otherwise, FGAG is not obliged to answer the Request. If the Customer wishes Requests to be handled by a third-party provider commissioned by the Customer, this must be agreed in the Service Contract or approved in advance and in writing by FGAG. In addition, the Customer must provide FGAG with the details of the third-party provider's contact person in advance and in writing. Otherwise, FGAG is not obliged to respond to the Request.
- 3.5. The Request must relate to problems with the Product covered by the corresponding Service Level Agreement, including hardware or software components. FGAG is not obliged to respond to Requests relating to other products or areas, in particular concerning products, hardware or software from third-party companies. Alternatively, FGAG may invoice the Customer additional charges for the associated expenses incurred by FGAG in accordance with the applicable Price List.
- 3.6. Requests are processed by FGAG from Monday to Friday from 8.00 – 12.00 and 13.15 – 17.00 (the "Service Hours"). Official public holidays

- in the Canton of Berne and other days on which FGAG employees do not work are excluded from the Service Hours. The applicable Service Level Agreement may specify different availability times.
- 3.7. Upon receipt of a Request from the Customer, FGAG shall process the Request during the Service Hours and within the applicable response time in accordance with the Service Level Agreement applicable to the Product concerned.
 - 3.8. The relevant response time begins upon confirmation of receipt of the Request by FGAG. Further provisions are set out in the applicable Service Level Agreement.
 - 3.9. Services are provided at the discretion of FGAG by e-mail, telephone, remote access or other means. The Customer is obliged to provide FGAG with remote access if required. In this case, the Customer shall grant FGAG's support personnel the right to access the Customer's data insofar as this is necessary for the provision of the required Services at the sole discretion of the support personnel. It also ensures that the relevant Services of FGAG do not breach applicable law (in particular data protection law).
 - 3.10. The Service Level Agreement applicable to the Product concerned determines whether and to what extent the Services and any associated costs such as travel and accommodation costs incurred by FGAG are already covered by the service fees or result in additional fees.
 - 3.11. If the number of Requests from the Customer in a calendar month exceeds the maximum figure agreed in the applicable Service Level Agreement, FGAG shall be entitled to charge the Customer for each additional Request in accordance with the applicable Price List, unless the Request was caused by an error or defect for which FGAG is responsible. If no maximum number of Requests has been agreed between the Parties, more than five Requests per calendar month will result in additional fees. This also applies in cases in which the Customer's Requests result in costs for FGAG that exceed ten hours per Product and per year.
 - 3.12. The Customer has access to up-to-date documentation relating to the relevant Products. FGAG shall determine the content and scope of the documentation at its own discretion.
 - 3.13. FGAG shall carry out annual preventive maintenance on site for the Products covered by the Service Contract, insofar as this is provided for in the applicable Service Level Agreement or is requested by the Customer. This is to ensure that errors and other problems can be avoided as far as possible. The scope and content of preventive maintenance shall be determined at the discretion of FGAG. Whether or not the corresponding Services of FGAG are covered by the service fees is determined by the applicable Service Level Agreement. Notwithstanding the above provisions, however, no Product repairs are covered by FGAG's preventive maintenance work and must be paid for additionally by the Customer.
 - 3.14. Depending on the applicable Service Level Agreement, the Customer shall receive a defined discount on replacement and wear parts and/or other parts in relation to the affected Product. No discounts shall be granted unless explicitly provided for in the applicable Service Level Agreement.
 - 3.15. The applicable Service Level Agreement may state that the Customer will receive an extension of the applicable warranty for a specific Product for a maximum of another two years. The warranty may be extended by FGAG after these two years for another 12 months upon Customer's request. FGAG decides at its own discretion whether to grant the 12-month extension.
 - 3.16. The applicable Service Level Agreement may specify that rental Products should be made available to the Customer on advantageous terms. The rental of Products is governed by separate terms and conditions.
 - 3.17. FGAG shall provide the Customer with updates from time to time to update the software and firmware contained in the Products and shall inform the Customer accordingly via software release notes. FGAG shall offer the Customer assistance with the installation of updates and shall provide training in relation to new features or other changes. The applicable Service Level Agreement determines whether and to what extent these Services of FGAG are to be paid for additionally by the Customer.
 - 3.18. FGAG reserves the right not to provide Services or to charge the Customer additional fees for these Services if:
 - the Product concerned has been modified by the Customer or a third party without the prior consent of FGAG;
 - the Product has been damaged as a result of an attempt by the Customer or a third party to carry out modifications or to remedy defects without the prior consent of FGAG;
 - the problem was caused by third-party software or hardware, by negligence on the part of the Customer or a third party, or by other circumstances beyond FGAG's control;
 - the Customer has not duly paid all service fees due at the time when FGAG was to provide Services, i.e. in particular if FGAG invoices have not yet been paid.
 - 3.19. The Services may be temporarily unavailable from time to time due to maintenance work or for other reasons beyond FGAG's reasonable control. FGAG shall make reasonable efforts to inform the Customer of any planned unavailability of the Services.
 - 3.20. FGAG shall be entitled to engage third parties to provide the Services under the Service Contract without requiring the Customer's consent. Upon request, FGAG shall inform the Customer of any third parties involved and shall ensure that such third parties enter into a confidentiality agreement with similar provisions as set out in Section 11 below and, if required by applicable law, an appropriate data processing

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agreement in accordance with applicable law, insofar as these third parties process the personal data of the Customer.

4. PRICES AND PAYMENT

- 4.1. Unless otherwise expressly agreed in writing, the prices listed in FGAG's Quotes for the provision of Services (the "Service Fees") are in Swiss francs (CHF). The Service Fees are specified individually for each Product in the Quote.
- 4.2. Any Services provided by FGAG at the Customer's request in connection with products that are not explicitly covered by the Service Fees under the terms of this Service Contract shall be payable by the Customer in addition to the Service Fees (the "Additional Fee"). An Additional Fee may be incurred, for example, due to activities carried out by FGAG in the event of a warranty exclusion or additional installation or training services. It shall be charged on a time and material basis unless otherwise agreed in writing between the Parties. The hourly rates for Services and costs of materials are based on the applicable FGAG Price List.
- 4.3. Section 4.2 above shall also apply if no prices are stated in the corresponding Quote for a service.
- 4.4. The Service Fees and the Additional Fees do not include any customs, shipping and insurance costs, VAT, sales tax or other taxes. If owed, these sums must be paid additionally by the Customer.
- 4.5. The Service Fees are due twelve months in advance. The Additional Fees are due upon conclusion of the corresponding Services, subject to any deviating agreement in the applicable Quote
- 4.6. The Service Fees and the Additional Fees are due for payment in full and without deductions within 30 days of the invoice date. After expiry of this payment deadline, the Customer shall automatically be in default without any further reminder and shall be liable to pay default interest at a rate of five percent per annum. Furthermore, following a written warning of at least 30 days, FGAG shall be entitled to suspend all Services owed under the Service Contract and other contracts between the Parties relating to Products until FGAG's invoices have been settled in full. FGAG reserves all further statutory rights in the event of a payment default.
- 4.7. The Customer shall have no right to offset payments unless their claim has been expressly acknowledged in writing by FGAG or has been established in a final judgment by the competent court. The Customer shall not have the right to assign claims to third parties without the written consent of FGAG.
- 4.8. Unless otherwise specified in the Service Contract, all fees under this Service Contract are non-refundable and there shall be no reimbursements or credits for unused periods.

5. WARRANTY

- 5.1. FGAG warrants that the support Services shall be provided with due care, skill and expertise and in accordance with applicable laws and regulations.
- 5.2. FGAG's warranties and their duration with regard to Product defects are governed by the GTC of Sale. The relevant Quote may specify an extended warranty period for defined Products.
- 5.3. The Customer's remedies in the event of a breach of warranty by FGAG shall be limited to damages within the scope of the limitations of liability under the Service Contract and to extraordinary termination if the necessary conditions set out in the Service Contract are met.
- 5.4. The above provisions of Section 5 conclusively define FGAG's warranties and the Customer's rights in the event of any breaches thereof. All further warranties, in particular any existing statutory warranties, as well as the corresponding rights and legal remedies of the Customer, are hereby explicitly excluded.
- 5.5. In particular, all warranties by FGAG in connection with the legal and regulatory conformity of the Products are excluded, unless explicitly stipulated otherwise in the corresponding Service Contract. The Customer alone is responsible and liable for ensuring that use of the Products in the specific area of application and territory complies with the statutory regulations.

6. LIABILITY

- 6.1. FGAG shall only be liable to the Customer in connection with the Service Contract for damage caused intentionally or by gross negligence. FGAG shall not be liable for auxiliary persons. Any further liability for damages in connection with the Service Contract is excluded to the extent permitted by law. This exclusion of liability applies irrespective of the legal grounds on which the claims are asserted. In particular, it is also applicable to warranties and guarantees.
- 6.2. The Customer must take all reasonable measures to avert damage and minimize the amount of damage.
- 6.3. FGAG shall not be liable for defects for which it is not responsible, in particular for defects resulting from the following conduct by the Customer: unauthorized or improper use of Products, failure to observe the operating instructions, modification of the Products, incorrect commissioning, incorrect handling, incorrect installation, use of unsuitable accessories or unsuitable spare parts (including software, devices or reagents) and improper repairs. FGAG shall not be liable for normal wear and tear. Furthermore, FGAG shall not be liable if the Products or parts of the Products are used with instruments or software not supplied by FGAG.

7. INTENDED USE AND LIABILITY OF THE CUSTOMER

- 7.1. The Products may only be operated or used by the Customer in accordance with the purposes, specifications and areas of application set out in the Quote or in the product description issued by FGAG (the "Intended Purpose"). The Products may not be modified or combined with other products or components. The Intended Purpose also includes the relevant definition as disposable products, as Products intended exclusively for research purposes and as general laboratory supplies.
- 7.2. If the Customer breaches Section 7.1 above, they shall be obliged to indemnify FGAG against claims by third parties, including official requests, insofar as such claims are the result of this breach. This also applies in cases in which the Customer has resold Products to third parties that have been modified or combined contrary to their Intended Purpose.

8. COMPLIANCE WITH REGULATORY REQUIREMENTS BY THE CUSTOMER

- 8.1. The Customer undertakes to operate, use, maintain and service the Products exclusively in accordance with the applicable legal and regulatory provisions and in accordance with the specifications of the FGAG operating instructions enclosed with the Products. In particular, the Customer must report all incidents, near-incidents and recalls to the competent authorities in accordance with the applicable legal provisions, and must provide FGAG with a copy of the report immediately after its submission.
- 8.2. Without prejudice to the Customer's reporting obligations imposed by law, the Customer must always inform FGAG in writing of any incident of which it becomes aware, as defined below: malfunction, failure or alteration of the characteristics or performance or inadequacy of the labeling or operating instructions of a Product, especially if this has or could have serious consequences. Such incidents must be reported to FGAG immediately after the Customer becomes aware of them, and within three working days at the latest.
- 8.3. The Customer must ensure that product support and maintenance work is carried out exclusively by qualified specialists. At FGAG's request, the Customer must provide FGAG with all relevant maintenance documents.
- 8.4. If the Customer breaches statutory or regulatory provisions when operating or using the Products, the Customer shall be obliged to indemnify FGAG against all damages, losses, claims and costs resulting from the aforementioned breach of duty.

9. CONTRACT TERM AND TERMINATION

- 9.1. The Service Contract shall enter into force on the start date defined in the Quote (the "Start Date"). It shall remain valid until it is terminated by one of the Parties in accordance with the following provisions.
- 9.2. The Service Contract shall remain in force for twelve months (the "Initial Term") and for subsequent extension periods of a further twelve months each (the "Extension Periods") unless the Service Contract is terminated by either Party at least three months prior to the expiry of the Initial Term or the relevant Extension Period. The Initial Term and the Extension Period are automatically extended unless the Service Contract is terminated. A different Initial Term or Extension Period can be specified in the relevant Quote.
- 9.3. Notwithstanding the foregoing provisions, either Party may terminate the Service Contract at any time with immediate effect if the following events affect the other Party:
 - bankruptcy or similar events, such as the appointment of an administrator, liquidator or other representative with similar powers;
 - the cessation of business operations, winding up or liquidation of the other Party, except for the purpose of reorganizing the company; or
 - if the other Party breaches material obligations under the Service Contract and has not remedied this breach within 30 days of receiving written notification from the other Party. Failure to pay Service Fees or Additional Fees on time shall always be considered a material breach in this respect.
- 9.4. Termination of any kind in accordance with the Service Contract must be notified in writing to be valid.
- 9.5. Upon termination of the Service Contract, FGAG shall no longer be obliged to provide any Services under the relevant Service Contract, and all Service Fees and Additional Fees shall become due and payable immediately. In addition, each Party must immediately destroy any confidential information provided by the other Party.
- 9.6. The Customer hereby acknowledges and agrees that FGAG is not obliged to retain any data provided by the Customer and that such data may be irretrievably deleted and destroyed by FGAG within 30 days of termination of the Service Contract.
- 9.7. Termination of the Service Contract shall not release either Party from their respective obligations to the other Party that arose prior to the effective date of termination. All provisions of the Service Contract which by their nature should survive the termination or expiration of the Service Contract shall remain in force, including, but not limited to, accrued rights to payment, confidentiality obligations, warranty disclaimers and limitations of liability.

10. INTELLECTUAL PROPERTY

- 10.1. All rights to the Products, the related documents and the work results created by FGAG under the Service Contract are and shall remain the sole property of FGAG. This also applies in particular to the software

contained in the Products. In accordance with the Service Contract, no ownership rights shall be transferred to the Customer.

- 10.2. The rights to all suggestions, enhancement requests, feedback, recommendations or other information communicated by the Customer with respect to the Service Contract or the Products shall be owned by FGAG, and the Customer hereby makes all assignments and takes all reasonable actions necessary to fulfill the foregoing ownership rights.

11. CONFIDENTIALITY AND DATA PROTECTION

- 11.1. "Confidential Information" within the meaning of the Service Contract shall refer to all information which one Party (the "Disclosing Party") provides or has already provided to the other Party (the "Receiving Party"), provided that this information has been marked as "confidential" in a clearly visible place. Without this marking, the information provided is never Confidential Information, unless otherwise stipulated in the Service Contract. Confidential Information may, for example, take the form of data, figures, documents, samples, drawings, plans, business intentions, Customer names, problems or solutions to problems that have been made accessible. Notwithstanding the foregoing provisions, Quotes issued by FGAG and related documents shall always be deemed Confidential Information of FGAG.
- 11.2. Information shall not be regarded as Confidential Information
- if it was or is already generally known at the time of communication due to circumstances that did not constitute a breach of Section 11 of these GTC or of a confidentiality agreement with a third party;
 - if the Receiving Party already knew the information before it was disclosed to it by the Disclosing Party;
 - if the Receiving Party obtained the information independently without using Confidential Information of the Disclosing Party to do so; or
 - if the Disclosing Party had agreed to disclose the information to third parties in advance and in writing.
- 11.3. The Receiving Party undertakes to treat the Confidential Information as confidential.
- 11.4. The confidentiality obligations pursuant to Section 11 of these GTC shall apply for a period of five years after termination of the corresponding Service Contract.
- 11.5. The Parties may conclude a confidentiality agreement that goes beyond and is more detailed than Section 11 of these GTC. Its validity requires the written form.
- 11.6. Each Party is obliged to comply with all applicable legal provisions on data protection. Details of the use of the Customer's personal data by FGAG are governed by the Mandate for data processing, if applicable.

12. FORCE MAJEURE

- 12.1. Events beyond FGAG's control and for which FGAG is not responsible, such as force majeure, war, natural disasters, strikes, lockouts, pandemics, official measures, delays or other problems at suppliers or similar events, shall in any case release FGAG from its obligation to deliver or perform on time for the duration of such events.
- 12.2. Deadlines which have been agreed upon as binding shall be extended by the duration of the disruption. If the disruption lasts longer than two months, either Party is entitled to terminate the corresponding Service Contract with immediate effect. Claims for damages by the Customer are excluded in all cases.

13. CONTRACT AMENDMENTS

- 13.1. FGAG shall inform the Customer of any amendments to the Service Contract with a notice period of at least four weeks. The Customer has the right to object to the change within 10 days of receipt of the corresponding notification. If the Customer does not object in due time, the amendment shall be deemed accepted and shall become effective. If the Customer objects to the amendment in due time, FGAG may, at its discretion, continue the Service Contract in line with the original terms and conditions, or terminate it with effect from the date on which the amendment to the Service Contract was to take effect.
- 13.2. Section 13.1 above also applies with regard to fees. However, FGAG may unilaterally adjust the fees without observing Section 13.1 above, provided that the fees are not increased by more than 10% per calendar year.
- 13.3. FGAG may change the characteristics and functionalities of the Products (including software) and the Services owed under the Service Contract at any time and at its own discretion without having to comply with Section 13.1 above, provided that the functionalities of the Products concerned and the Services to be provided are not significantly impaired as a result and that the change does not result in an increase in fees.

14. FINAL PROVISIONS

- 14.1. The requirement for the written form within the meaning of the Service Contract also includes e-mails.
- 14.2. Should one or more of the provisions of the Service Contract be or become void or ineffective, this shall not affect the remaining parts of the Service Contract. In the event that a clause is invalid or ineffective, it shall be replaced by a clause that comes closest to the economic purpose of the invalid provision.

- 14.3. FGAG shall be entitled to assign the Service Contract and the rights and obligations contained therein or parts thereof in whole or in part without the Customer's prior written consent.
- 14.4. The failure or omission of FGAG to enforce any of the provisions of the Service Contract shall not be construed or deemed to be a waiver of FGAG's rights, nor shall it affect the validity of the entire Service Contract or any part thereof. It in no way affects the rights of FGAG to take subsequent measures.
- 14.5. Titles in the Service Contract serve only as a general guide and do not conclusively define the scope of the provisions. Any translations of these GTC or other parts of the Service Contract are intended solely as a reading aid. In the event of disputes or questions of interpretation, only the English version shall be used.
- 14.6. All contractual relationships between the Parties concerning the Service Contract are subject to Swiss substantive law, excluding the conflict of laws rules and international agreements, in particular the Vienna Convention (United Nations Convention on Contracts for the International Sale of Goods of April 11, 1980).
- 14.7. The exclusive place of jurisdiction for all legal disputes arising from contractual relationships between the Parties or otherwise in connection with the Service Contract shall be Gwatt (Thun), Switzerland. Notwithstanding the preceding sentence, FGAG shall also be entitled to sue the Customer at the Customer's place of business.

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