

Appendix to
Quotation and Agreement

General Terms and Conditions of Software Maintenance and Hotline Agreement

**for
Application Software**

**used with
Carl Zeiss
Coordinate Measuring Machine**

Contents:

- Performance description
- Hotline service
- Software maintenance
- General terms and conditions of software maintenance and hotline agreement

Description of Service Work "Software Maintenance"

I. Services

Software maintenance covers the provision of corrected and upgraded program versions of the contractual software and includes the following details:

1. CZ-IMT shall revise the contractual software at regular intervals and shall, upon call-forward notice, supply the customer with no less than one revised version (main revision) per calendar year on a suitable data medium.

Annual software maintenance shall include adaptations, improvements and upgrades of individual or several measuring and evaluation programs of the contractual software.

2. With the main revision, CZ-IMT shall provide the customer with a revised operating manual in the form of replacement sheets or a completely new version giving an overview of all changes and extensions compared to the last revision.

II. Special conditions

1. One condition for software maintenance is the conclusion of a software maintenance and hotline agreement with the services of hotline service according to the relevant requirements specifications.
2. Every main revision may also call for an updated revision of the operating software which must be provided by the customer.

III. Services not included in software maintenance

1. Installation of the main revision and the patch records for error correction.
2. Installation and delivery of operating systems.
3. Any firmware, hardware or control supplements which might be required, and their installation.

Description of Services "Hotline-Service"

Services to be provided

The Hotline Service consists of telephone consultation and support relating to the contractual software and includes in detail:

1. Telephone consultation and support given to system supervisors of the customer and/or his/her proxy;
2. Telephone consultation and support for analyzing any problems occurring, particularly for troubleshooting program and operating errors;
3. Telephone consultation and support for eliminating the effects of operating errors and for answering questions regarding use, operation and documentation;
4. Telephone consultation and support by giving information for circumventing possible program errors, as far as this is possible;
5. Telephone consultation and support is provided on company workdays of CZ-IMT from Monday to Thursday in the time between 8.00 a.m. and 5.00 p.m. and on Friday in the time between 8.00 a.m. and 3.00 p.m.
6. Telephone consultation and support is only provided for the last and penultimate version of a software program.
7. Telephone consultation in the field of "Application-related Support" (ATU) on the subject of operation shall be limited to 10 calls per year. The entitlement to further calls can be purchased subsequently.
8. CZ-IMT provides the customer with the following services:
 - Access to Zeiss network media (Extranet)
 - Information on training programs
 - Application-related information with discussion forum
 - Advance notice of new products
 - Notes on metrology training measures.
 - Links to Zeiss business partners.
9. The customer shall notify CZ-IMT in writing or by e-mail of any software problems which cannot be solved by telephone consultation and support, giving relevant background information
10. In addition, the Hotline Service offers the possibility of using the Tele Service for a detailed status analysis of the machine and software. For this purpose, direct data access to the machine and a separate service agreement are required.

Terms and Conditions of Software Maintenance and Hotline Agreement

1. Subject of contract

- 1.1 The general terms and conditions of this software maintenance and hotline agreement shall be the sole basis of the services of Carl Zeiss Industrielle Meßtechnik GmbH (CZ-IMT) itemized in the software maintenance agreement with the customer in accordance with the scope of performance defined therein and in the agreed description of service work. Agreements deviating from or supplementing these terms and conditions – particularly conflicting purchasing conditions of the customer – shall only apply if they have been expressly acknowledged in writing by CZ-IMT indicating that they are an amendment or supplement to the software maintenance agreement; this shall apply even if CZ-IMT fails to contradict conflicting purchasing conditions in isolated cases. The provision requiring that changes and amendments must be made in writing can be negated only by written agreement.
- 1.2 In the event that any one or several of the clauses of these general terms and conditions of software maintenance should be determined to be invalid, this will not affect the validity of the remaining clauses or the remaining parts of such clauses.

2. Services

- 2.1 The content and extent of the services to be provided by CZ-IMT for the customer in the context of this software maintenance and hotline agreement are defined in the Descriptions of Service Work relating to the software maintenance and hotline agreement.

- 2.2 CZ-IMT shall provide the software maintenance as defined by this agreement only for the last main version which was released by CZ-IMT.

CZ-IMT shall provide support for earlier program versions only against separate invoice; CZ-IMT shall not be obliged, however, to provide such services.

- 2.3 Excluded from the scope of performance as defined by this maintenance agreement are

- a) the elimination of individual program errors in the customers' contractual software only for this customer alone
- b) the on-site installation of software revisions and updates and firmware supplements on an individual customer's CMM computer, and
- c) system- and application-related support on the customers' premises.

- 2.4 Installations that CZ-IMT has performed and system- and application-related support it has provided on-site at the customer's request will be charged separately.

3. System administrator

- 3.1 Within 4 weeks of the agreement having become effective, the customer shall inform CZ-IMT in writing of the name of a system administrator and a deputy as contacts for the software maintenance and hotline service, both of whom have participated in the training courses for the contractual software provided by CZ-IMT and additionally in a system specialist course. The customer shall notify CZ-IMT immediately in writing if the contact person has changed.
- 3.2 CZ-IMT shall send software revisions and updates, documentation, manuals and

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- other correspondence under the scope of this maintenance agreement to the system administrator. Only the system administrator and his deputy shall be entitled to make use of the telephone support and advice provided by the hotline service.
- 3.3 Software installations must only be performed by trained system administrator.
- 4. Error messages and troubleshooting**
- 4.1 The parties agree that each software revision only constitutes a specific development status of the data processing program and cannot, as such, be free from errors.
- 4.2 Errors of which CZ-IMT has been informed and which are not relevant to the respective program will be taken care of in the revision of the programs under the scope of general software revisions; the time and the manner of error rectification shall be at the discretion of CZ-IMT. A program error shall only be deemed present if the function of the program fails to coincide with the specifications of the documentation. It must be possible to describe the error and it must be reproducible at any time.
- 4.3 If CZ-IMT is unable to reproduce the error itself, it can endeavor to reproduce the error together with the customer on the latter's premises. The customer will support CZ-IMT in this process. If an error of which CZ-IMT was notified should turn out to be an application-related problem or a software error caused by the customer, CZ-IMT shall be entitled to charge the customer with the costs incurred.
- 5. Conditions of software maintenance**
- 5.1 Current revision of the contractual software. This must be purchased in the form of a software upgrade.
- 5.2 The customer must provide at his own cost and as specified by CZ-IMT the following for the current revision of the contractual software and operating system he is using:
- a) adequately configured computer hardware and firmware and the necessary input and output units, and
 - b) he must be licensed to use the software in question.
- 5.3 The customer's right to software maintenance as defined by this agreement shall cease if the customer himself or third parties make changes in the software to be maintained or to the coordinate measuring machine including the computer and peripheral units, unless the customer can prove that the changes have no effect on the software maintenance services.
- 5.4 On agreement with CZ-IMT, the customer shall provide all information required for the due fulfillment of this software maintenance and hotline agreement.
- 5.5 CZ-IMT shall be entitled to have the software maintenance performed by third parties. The customer agrees that his name, address and the data contained in the software maintenance and hotline agreement can be communicated to the suppliers of operating systems for software, of computers and other instruments or instrument components, and to other third parties which CZ-IMT may choose for the performance of services to meet its obligations as defined by this agreement.

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5.6 The customer shall not be entitled to transfer any rights granted to him by this agreement to third parties. This also applies to rights of CZ-IMT to the client.

6. Rights to software and documentation

6.1 If the customer acquires any rights of use in compliance with the specifications, CZ-IMT shall grant the customer an unlimited, non-exclusive and non-transferable license to use on the software revisions (main version, other updates), the firmware supplements, the relevant documentation and other information supplied by CZ-IMT under the scope of this agreement for the computer of that coordinate measuring machine for which the customer has concluded this maintenance agreement. All other rights on the contractual software shall remain with CZ-IMT.

6.2 The customer shall not be entitled to make the contractual software and the operating system, the software revisions and updates, the relevant documentation and other information supplied to him under the scope of this agreement, available to third parties without prior written consent by CZ-IMT.

6.3 The customer shall be entitled to produce a copy of the contractual software, the operating system and the software revisions for the sole purpose of back-up and filing, or for replacement or troubleshooting purposes. He undertakes to provide all copies with the proprietary right, copyright and other notes, labels and explanations contained in the originals, but at least with the following copyright label:

a) on the contractual software:

"Copyright Carl Zeiss, Germany
(or Carl Zeiss Industrielle Meßtechnik GmbH
or metrologic group ®)

All rights reserved.

Reproductions of any kind only with the consent of Carl Zeiss Industrielle Meßtechnik GmbH or metrologic group ®".

b) on the operating system:

"Copyright of the respective operating system manufacturer.

All rights reserved.

Reproductions of any kind only with the consent of „Name of operating system manufacturer".

6.4 The contractual software and the operating system is protected by copyright. The customer is not permitted to,

a) modify, translate, retro-develop, decompile or disassemble the software as a whole or in parts,

b) compile works derived from the software or to reproduce the written material,

c) copy or reproduce in any other way the software as a whole or in part, in its original or in a modified form, or combined with other software or included in other software (excluded from this is the production of copies of the data processing programs for the intended use and for data back-up as per 6.3),

d) change or remove the labelling and the copyright notices on the software and the data carriers.

7. Warranty

7.1 CZ-IMT shall rectify material deficiencies on data carriers, firmware supplements and written documentation supplied under the scope of software maintenance, at its own discretion either by delivering goods which are free from deficiencies or by subsequent improvement.

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- 7.2 CZ-IMT will itself decide whether to eliminate deficiencies in the software revisions and updates by indicating (by telephone or in writing) how to avoid or prevent the effects, or by sending patch blocks or a new software revision.
- 7.3 Other and more comprehensive warranty claims, particularly claims for cancellation or reduction of payment, can only be made by the customer if CZ-IMT has culpably failed to meet its warranty obligation even after expiration of a reasonable deadline specified by the customer with a warning to refuse, or if at least two attempts at warranty have failed.
- 7.4 The period of limitation of the warranty is 12 months.
- 7.5 No warranty shall apply for advisory services and services other than the provision of hardware and software.

8. Industrial property rights and copyrights

- 8.1 If a third party files claims against the customer due to infringements of a German commercial property right because this customer is using a software revision, firmware supplement or related documentation supplied by CZ-IMT, CZ-IMT shall be obliged to pay possible costs or compensatory damages legally awarded to the holder of the property rights or previously conceded by CZ-IMT in writing. This applies on the condition that the customer notifies CZ-IMT immediately in writing of such claims and that CZ-IMT has the right to take all defensive measures and out-of-court settlements. The customer undertakes to support CZ-IMT to the best of his knowledge in the defense. Under these conditions CZ-IMT will procure the right to further use of the software revision, firmware supplement or documentation for

the customer. If this should not be possible under economically reasonable conditions, CZ-IMT undertakes, at its own discretion and its own cost, to either modify or replace the object in question so that no infringement of the property right incurs, or to take back the object and to reimburse the amount paid for it, less an amount commensurate to the use made of it.

- 8.2 CZ-IMT shall not be liable if infringements of property rights are caused by software revisions or updates, firmware supplements or documentation supplied by CZ-IMT being used in a way other than intended and not on the specific coordinate measuring machine including the peripheral equipment.

9. Liability

- 9.1 The liability of CZ-IMT, its staff members and persons employed in performing an obligation, for substituting damages for whatever legal reason - including culpa in contrahendo, special breach of contract, default, impossibility and illegal action - shall, subject to the other restrictions of the following paragraphs, be restricted to cases where
- a) the damage is due to intent or gross negligence or the absence of a promised property, or
 - b) an essential contractual obligation is negligibly violated, with the liability in this event being restricted to the foreseeable damage and its value being limited to EURO 100,000.-- for property and pecuniary damages and to EURO 1,000,000.-- for personal damages.
- 9.2 If the customer is a merchant by virtue of entry in the Commercial Register, a legal person of public law or a special property under public law, possible claims for

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damages shall be restricted in addition to the provision under 9.1 in such a way that CZ-IMT shall also not, in the case of minor negligence, be held liable for indirect damage, consequential harm in the form of pecuniary damage or lost profit. In the event of gross negligence, the liability of CZ-IMT shall be limited to EURO 100,000.-- for this type of damage.

- 9.3 CZ-IMT shall only be liable for the loss or modification of data caused by software deficiencies in accordance with the aforementioned provisions if the customer has produced back-ups of this data in machine-readable form and in application-related time intervals and has made sure that the data can be reproduced with an acceptable expenditure.
- 9.4 The liability of CZ-IMT as defined by the product liability legislation for personal or material damage to privately used objects shall remain unaffected in the case of deficiencies in the delivery object.

10. Payment

- 10.1 The customer shall pay an annual service lump sum for the software maintenance and hotline service. This is calculated from the price list for the contractual software in the customer's possession valid at the beginning of the contractual year. If the maintenance agreement is extended as per provision 12., the value of the payment for the subsequent contractual year depends on the price list valid at the time of extension. An increase over the current contractual year which exceeds 10% shall entitle the customer to give written notice of termination of contract within 30 days on receipt of the notification and with effect of the end of the current contractual year.

- 10.2 Payment is due without deduction at the beginning of each contractual year within 30 days on receipt of invoice.

- 10.3 The statutory value-added tax will be charged in addition.

11. Function discount

If the customer concludes software maintenance and hotline agreements for several coordinate measuring machines, CZ-IMT grants a functional and quantity discount in accordance with the discount graduation of the relevant price list and depending on the number of coordinate measuring machines in question. (This excludes the software maintenance of Metrologic group ®). The discount is granted on condition that the expenditure is reduced by observing the following conditions:

- a) the customer appoints only one system administrator for all coordinate measuring machines concerned, and
- b) the customer agrees to obtaining only one copy of the software revisions and updates for all coordinate measuring machines concerned, and
- c) a single system administrator installs the licensed software revisions and updates on the coordinate measuring machines concerned on the customer's premises.

12. Duration

- 12.1 The maintenance agreement has a duration of 12 months. Unless notice of termination is given in writing by one of the two parties one month prior to expiration, the duration shall be extended by another 12 months.

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Start of duration:

12.2 With a newly delivered coordinate measuring machine the contractual duration starts with the date of installation

12.3 If no such agreement is concluded on the purchase of a new coordinate measuring machine, the warranty will remain with its hotline support and error correction in the software revision supplied. As a consequence, no software upgrades and thus no function extensions are granted..

12.4 If the agreement is concluded later than 6 months after delivery, additional costs will be incurred by software upgrades.

12.5 The right of termination for an important reason shall remain unaffected. An important reason shall be deemed to exist in particular in the event of a breach of contract which makes the continuation of the agreement unacceptable for the other party. This includes any unauthorized use of the software.

13. Final provisions

13.1 The Annex "Description of service work" is part of this software maintenance and hotline agreement as far as they concern the corresponding maintenance services, and precede these General Terms and Conditions of Software Maintenance and Hotline Agreement.

13.2 CZ-IMT is entitled to assign this agreement, parts of this agreement, or the rights and obligations of this agreement to its affiliates.

13.3 German law shall apply to this agreement. Stuttgart or, at the discretion of CZ-IMT, the legal residence of the customer shall be the sole place of jurisdiction for all claims made in connection with this agreement.