

**Genias Graphics GmbH & Co. KG  
General Terms and Conditions for  
the Support of Standard Software**

**1.0 Subject-matter of the Contract**

1.1 GENIAS GRAPHICS (GENIAS) renders the services of consultation, planning, organisation, support (in a narrow sense), and training, and the other services specified in the data sheet which is component of the contract. GENIAS may have the services rendered by a subcontractor.

1.2 As far as the support to be rendered by GENIAS concerns software this refers to standard software produced and developed by GENIAS itself or by third parties (hereinafter called „Contractual standard software“).

**2.0 Range of Performance – Services Discharged by the Lump-sum Support Fee**

2.1 Unless otherwise laid down in the data sheet GENIAS renders the following services for the support fee agreed upon in the data sheet; these services shall be due as soon as the customer has paid all payable bills to which the General Terms and Conditions apply.

**2.2 Treatment of Defects**

Treatment of reproducible defects of the contractual standard software and of the documentation placed at the customer's disposal pursuant to justified defect reports by the customer: GENIAS will do its best to tell the customer how the defect can be eliminated or by what measures the defect can be by-passed or temporarily bridged over. GENIAS will pass on the defects reported by the customer to the producer of the software.

**2.3 Delivery of Major Updates**

GENIAS will place at the disposal of the customer the respective new basic program version (major update) of the contractual standard software on the data carrier agreed upon after general clearance by the producer of that software.

**2.4 Phone Service – Hotline**

GENIAS will render the support and consultation to the customer needed for the solution of the problems of installation, operation, and application of the contractual standard software to be reported by him precisely either by telephone, or telefax, or electronic mail.

**3.0 Services to be Remunerated Separately**

As far as GENIAS renders services by order of the customer exceeding the services laid down in no. 2 of these General Terms and Conditions for the Support of Standard Software (range of performance – services discharged by the lump-sum support fee) the additional services shall be paid for separately. The following services number in particular among these services to be agreed upon and to be paid for separately:

**3.1 In-situ-service**

All support services to be rendered in the business premises of the customer

**3.2 Extended Support and Consultation Services**

All services rendered by GENIAS not covered by the range of performance pursuant to no. 2 of these General Terms and Conditions for the SUPPORT of Standard Software (range of performance – services discharged by the lump-sum support fee).

**4.0 Exclusion of Performance – no Obligation to Render Services under this Contract**

The customer shall not be entitled to claim services from GENIAS in the following cases:

4.1 The customer has knowingly or unknowingly changed or damaged the contractual standard software or parts of it.

4.2 The customer has integrated the contractual standard software or parts of it into other computer programs or other software.

4.3 The customer does not use the contractual standard software in accordance with the specifications provided by the software producer.

4.4 The version of the contractual standard software used by the customer is not conform to the latest program version (release) cleared by the producer of the software containing improvements, corrections of program defects, or other advantages compared to the preceding version, or supporting new operating systems or computers.

4.5 The version installed at the customer is not identical with the latest program version (release) cleared by the producer of the software, and this program version (release) resp. the update (patch) has already been obtainable from GENIAS for more than six months.

4.6 The customer has caused the problems by carelessness, misuse, inappropriate handling, or otherwise by negligence or with intent.

4.7 The contractual standard software is installed on a computer on which it cannot be operated.

**5.0 Rendering of Services**

5.1 GENIAS renders the services owing principally on weekdays from Monday through Friday with the exception of the legal non-working days during the time from 09.00 to 17.00 o'clock CET. If the service owing is rendered entirely or partly out of the office hours above by direction of the customer, the customer shall remunerate GENIAS for the expense pursuant to GENIAS' valid price list.

5.2 GENIAS has no obligation to render services as soon as the customer is in delay of payment.

**6.0 Duties to Co-operate and Incidental Obligations of the Customer**

6.1 The customer shall install and examine every new program version (release) resp. every update (patch) inclusive of the documentation immediately, in particular with regard to the completeness of the data carriers and manuals as well as the capability of functioning, and to claim defects eventually occurring immediately.

6.2 The customer shall supply his co-operative services needed by GENIAS to render its services, in time and free of charges for GENIAS.

6.3 As far as this is necessary to enable GENIAS to render the contractual services, the customer shall secure access for GENIAS to the contractual standard software and, if necessary, to other hardware and software as well as to qualified staff members and computing time.

6.4 The aforesaid duties of the customer to co-operate are essential obligations. If the customer neglects his duties to co-operate GENIAS will become free from its obligation to render services as far as these are affected by the neglected duties to co-operate.

**7.0 Remuneration, Maturity of the Support Fee, Delay of Payment – Set-off, Retaining Liens, Reservation of Property Right**

7.1 The amount of the annual lump-sum support fee follows from the valid price list and refers to one license of the contractual standard software.

7.2 As far as GENIAS renders additional services not discharged by the lump-sum support fee the customer shall pay for them pursuant to the relevant special agreement. The remuneration plus the value-added tax in force shall be mature with submission of the account.

7.3 The lump-sum support fee agreed upon as well as the value-added tax and other fiscal charges allotted to it shall be mature in advance as a lump-sum for 12 months beginning with the month which follows the placing of the order resp. the submission of account. The accounting period shall be the 12 months from the beginning of the term of the support agreement unless otherwise laid down in the data sheet.

7.4 If the customer is in delay of payment (one month after submission of account) the amount due shall bear interest at the rate of the ruling basic percentage plus eight percent and, if the customer is a consumer, plus five percent. In addition to that, the buyer shall pay the lump-sum of 10 EURO each for the first and second reminders by GENIAS.

7.5 If the customer has not yet or not yet completely paid the payable accounts until the appearance of the new basic program version (major update) the support contract shall end automatically (see 8.4).

7.6 GENIAS reserves the right of proving a higher damage caused by the buyer and to be compensated by him. If, on the other hand, the customer proves to GENIAS that no damage or a substantially lower damage occurred in consequence of the delay of payment the customer shall only compensate GENIAS for this damage.

7.7 The buyer has the right of set-off only when his counterclaim is either finally and absolutely proven by Court, or undisputed, or recognised by GENIAS GRAPHICS.

7.8 The buyer shall only have retaining liens as far as they rest on the same contractual relationship.

7.9 GENIAS reserves the proprietary right in the goods supplied until all debts due at the time of delivery have been paid. Until then the customer shall not acquire the right of use of the contractual standard software.

7.10 The customer shall immediately notify to GENIAS the seizure of the contractual standard software by third parties.

7.11 In case of the customer's delay in payment indebted by him as well as in case of a substantial lack of proper care by the customer the assertion of the reservation of proprietary right by GENIAS shall not be considered as revocation of contract unless GENIAS notifies this explicitly to the customer.

7.12 GENIAS may adjust the lump-sum support fee at the beginning of a new contract year pursuant to its valid price list. GENIAS shall notify the adjustment of the lump-sum support fee with submission of account for the new contract year.

7.13 If GENIAS adjusts the lump-sum support fee by more than 10 percent the customer may terminate the support contract within one month after reception of the yearly account.

**8. Term, Notice to Terminate**

8.1 The support contract has the term of one year.

8.2 The support contract is extended by another year every time when there is not given notice to terminate by one contracting party in written form three months before the end of the contractual year.

8.3 The contracting parties' right of extraordinary termination remains unaffected.

8.4 The support contract shall end automatically if the customer has not yet paid or not yet paid completely all debts due at the time of the appearance of the new basic program version (major update) (see 7.5).

8.5 The termination of the support contract does not involve the customer's obligation to give back the software (updates) acquired by purchase.

8.6 Before the resumption of the support contract the customer shall pay retrospectively all debts accrued since the notice to terminate the last support contract so that the support contract exists uninterruptedly from the purchase of the original license or the new version onward.

8.7 The customer has no right to claim the resumption of the former, the extension of the existing, or the conclusion of a new, support contract.

**9. Assignment**

The customer may only assign claims resulting from this contract to third parties with prior written consent by GENIAS.

**10. Warranty, Liability**

10.1 GENIAS has liability for those damages caused by it by gross negligence or with intent typically occurring by reason of the contractual rendering or application of support services by GENIAS and foreseeable, notwithstanding its liability for indebted physical injuries.

10.2 The liability for the lack of a warranted quality, for malicious deceit, or for damages of sound title remains unaffected.

10.3 Comparative negligence of the customer in the origin of a damage, e. g. insufficient supplying of co-operative services, faulty organisation, or inadequate data securing, shall be taken into account as to GENIAS' liability.

10.4 GENIAS is only liable for the replacement of data as far as the customer has taken all usual and appropriate precautions for data security and ensured that the data from data material kept available in a form legible by machine can be reconstructed at justifiable expense.

10.5 The customer shall immediately notify eventual damages to GENIAS within the meaning of the aforesaid liability stipulations in written form so that GENIAS, together with the customer, can ascertain the damage as early as possible.

**11. Property Rights, Copyright**

11.1 As far as GENIAS supplies new program versions (releases) resp. updates (patches) as well as documentations to the customer in performance of this support contract the customer herewith is granted the right of use to the extent agreed upon at the first acquisition by purchase of the contractual standard software.

11.2 GENIAS will treat confidentially all information and data not generally known which come to its knowledge in performing this support contract and which are marked as such by the customer. The customer is, however, responsible for the observance of the laws and regulations on data protection and data security.

**12. Other Stipulations**

The customer shall secure his data stock regularly according to the principles of properly data processing.

**13. Defects**

13.1 If the customer finds defects at the examination pursuant to no. 6.1 he shall notify these defects to GENIAS within eight working days through certified mail. The notification of defects shall include a detailed description to the customer's best endeavours.

13.2 Defects which cannot be found in the framework of the described properly examination shall be notified within three working days after detection in compliance with the requirements for the notification of defects stated in 13.1.

13.3 GENIAS will remove all defects of the new program version (release) resp. the update (patch) supplied inclusive of the manuals and other documents immediately within the warranty period of twelve months from delivery after respective notification by the customer as far as the defects impair the way of functioning as stipulated in the contract, and this not only irrelevantly. This is effected by remedying or replacement at GENIAS' option.

13.4 If GENIAS is not prepared or unable to immediately remedying or replacement, or if there is a delay in these measures for an appropriate time limit set by the customer, or if these measures fail for other reasons, the customer is entitled to cancel the contract or to claim reduction of the purchase price.

13.5 Unless otherwise stipulated GENIAS is not liable for damages which do not appear at the software supplied itself, except physical injuries; in particular, GENIAS does not assume liability for loss of data or other consequential damage.

**14. Written Form**

All agreements containing a change, a supplement, or an appropriation of the contractual terms and conditions as well as specific warranties or arrangements shall be put down in written form. This applies also to the derogation of this writing clause itself.

**15. Forum, Place of Performance**

The forum for all legal disputes arising in connection with this contract shall be Regensburg. The place of performance shall be the place of GENIAS' registered office.

**16. Applicable Law**

This contract shall be governed by German Law, in particular the German Civil Code (BGB) and the GERMAN Trade Code (HGB). The UN Convention of Vienna on Contracts on the International Sale of Goods shall not be applicable.

**17. Salvatory (Escape) Clause**

The invalidity of one or several stipulations in this contract shall not affect the validity of the residual contract. The contracting parties commit themselves to substituting that valid settlement for the invalid stipulation which answers the object pursued with the invalid stipulation as much as possible. Until such a settlement is reached that settlement shall be applicable in lieu of the invalid stipulation which answers best the sense and the purpose of the invalid stipulation.

**18. Conflicting Terms and Conditions**

The foregoing General Terms and Conditions shall apply to all GENIAS support contracts for standard software. Eventual trading conditions of the customer shall not be component of such a contract.