Cadwork General Conditions of Maintenance

Article 1.   Introduction

1. The company Cadwork has been one of the world leaders on the construction software market for more than thirty years.

2. Its comprehensive, flexible range of modules covers all fields of application in construction and each stage of a project.

3. The Customer certifies to have a user's licence valid for the latest version of the Cadwork software allowing it to duly subscribe for the maintenance services.

4. The Customer wishes to contact the company Cadwork for the purpose of obtaining a maintenance software service.

5. The Customer acknowledges that the proper performance of the maintenance services requires his full cooperation and consequently undertakes to constantly collaborate closely with the company Cadwork by providing all the information necessary for the proper performance of the latter's obligations.

6. Consequently, the Customer, after being fully informed on the service proposed by the company Cadwork and having assessed the timeliness of having recourse to this service, taking into account his own needs, wishes to benefit from a maintenance service provided by the company Cadwork.

7. The parties agree to constantly exchange information in order to contribute to the success of this contract and prevent any difficulties arising detrimental to the interests of both parties.

The parties undertake to closely cooperate in the context of the performance of their respective obligations in compliance with the terms of these general conditions.

Article 2.   Definitions

8. The terms defined below shall have the meanings indicated below between the parties:

   - "anomaly": anomaly which, singly or cumulatively, has repercussions on the use or exploitation of the functionalities;

   - "blocking anomaly": anomaly which, singly or cumulatively, has repercussions on the functioning by blocking the use or exploitation of the functionalities;

   - "circumventable anomaly": anomaly which, singly or cumulatively, has repercussions on normal functioning but does not block the use or exploitation of the functionalities;

   - "object code": source program translated into a binary language in the form of a computer readable and executable object code;

   - "source Code": computer program written in a programmable language understandable by an expert in the field;

   - "diagnosis": determination of the level of seriousness of the anomalies;

   - "days and hours worked": days and hours worked from Monday to Friday during the hours of availability in the support section of the Service provider's website;

   - "software": set of IT programs developed by Cadwork and/or on its behalf and placed at the Customer's disposal;

   - "circumvention solution": provisional solution to redress an anomaly within the application perimeter accompanied by full user instructions allowing this solution to be installed and/or exploited, whose installation and/or exploitation does not lead to additional costs for the Customer;

Article 3.   Subject-Matter

9. These general conditions define the rights and obligations of each of the parties concerning the maintenance services relating to the software.

Article 4.   Enforceability

10. These general conditions of maintenance are communicated with the maintenance offer, and are also available and accessible online. The online documents, accepted when the service order is placed, have priority over all earlier dated paper or electronic versions.

11. The Customer has the possibility of saving and printing these general conditions using the standard functionalities of his browser or computer.

12. When subscribing for the maintenance, the version of the general conditions binding on the Customer is that accepted by the latter.

13. Subsequently, Cadwork reserves the right to adapt or modify these general conditions at any time. The Customer will be informed, by mail and publication on the site's home page, of the planned modification no later than 8 days working days before these modifications come into force. These modifications must be accepted by the Customer, failing which he shall no longer be able to use the maintenance service after a period of six (6) months as of the date of entry into effect of the new version of the general conditions of licence, the contract being deemed terminated.

Article 5.   Documents

14. The contractual documents are, in decreasing order of priority:

   - these general conditions of maintenance;

   - its appendices.

15. In the case of contradiction between documents of a different type or level of priority, it is expressly agreed between the parties that the provisions contained in the document of a higher level of priority shall take precedence for the obligations in conflict of interpretation. In the case of contradiction between the terms of documents of the same level of priority, the documents with the most recent date shall take precedence over the others.

16. Notwithstanding the rules of interpretation of the contacts defined in pertinent legal texts, the criteria of level of priority shall be applied according to the following principles:

   - obligation by obligation;

   - or, failing this, paragraph by paragraph;

   - or, failing this, article by article.

Article 6. Technical scope

17. The services described in this contract only apply to the most recent versions of the software available when the maintenance services are implemented.

Article 7. Entry into force and duration

7.1 Entry into Force

18. The contract comes into force as of the subscription for the service.

7.2 Duration

19. Subscriptions are from 1 January to 31 December of each year.

20. In the case of a first subscription during the year, the customer is bound until the end of the year in progress and automatically for the following calendar year.

21. At the end of this initial period stipulated above, the contract is automatically renewed. This new period is itself renewable in the same conditions and for the same duration and as many times as necessary. However, at the end of the initial period, then every year, either party may terminate the contract, by giving three (3) months' notice, notified by registered letter with request for acknowledgement of receipt before 31 December of the renewed year, that is to say at the latest on 30 September of that year.

Article 8. Customer's Obligations

22. The Customer undertakes to:

   - ensure the backup of all its data and applications, before any assistance by the company Cadwork;

   - provide all up-to-date documentation relating to all or part of the elements of the Customer's operating configuration;

   - provide the company Cadwork with the possibility of questioning one or more members of the Customer's competent staff who were confronted with the anomalies in question;

   - provide an incident logbook correctly documenting all the anomalies encountered. In this respect, it is for the Customer to record in chronological order in an incident logbook all the anomalies and requests for assistance;

   - give itself the technical means, notably telecommunications means, necessary for the proper performance of this contract;

   - upon express request of the Service Provider, de-activate the anti-viruses and firewall for the time necessary for the corrective patches or a new version to be downloaded and installed;

   - grant administrator rights on the relevant workstations to the Service Provider's teams for the time necessary for downloading and installing the corrective patches or a new version.

Article 9. Warning

23. It is for the Customer to ensure:

   - that he has the competence necessary for using the applications to which this maintenance service relates;

   - that its structures are likely to acquire the competence necessary for performing the maintenance service;

   - that the requests for maintenance assistance are centralised by a sole contact person, appointed by the Customer, and who is motivated, available and has a sufficient level of technical competence for effective dialogue with the Cadwork teams.

Article 10. Maintenance Service

10.1 Diagnosis

24. The company Cadwork shall establish a diagnosis of the anomalies reported by the Customer, based on the information provided by the Customer's staff and its knowledge of the software products.

25. In this respect, when Cadwork considers that the requested service does not fall within the scope of maintenance but user training, Cadwork proposes suitable training for which it is possible to subscribe by a separate contract.

10.2 Corrective Maintenance

26. The services of corrective maintenance consist in correcting or circumventing any reproducible anomaly that appears during use in compliance with the software documentation.

27. The circumvention solutions are only provisional and must be completed by a definitive correction.

28. Any reproducible anomaly must be identified by the Customer and notified to the company Cadwork.

10.3 Perfective Maintenance

29. Perfective maintenance comprises the supply of upgrades allowing:

- anomalies to be corrected or containing improvements with equivalent functionalities decided by the company Cadwork;

- adaptation of the software made necessary by the upgrading of the operating system used by the Customer.

30. The Customer is not automatically and systematically provided with upgrades. They shall be provided upon request by the Customer, notably in the case of detection of an anomaly.

31. Generally, they will be provided for the Customer according to the clarifications provided on the Cadwork website.

32. Perfective maintenance comprises the supply of new versions.

33. Perfective maintenance does not include, under any circumstances, the supply of developments specific to the Customer's needs.

Article 11.   Exclusions from the Maintenance Service

34. In addition to the supply of new versions or specific developments, assistance due to the following is not covered by the maintenance fee:

- a non-reproducible anomaly on the Service Provider's configuration;

- the non-respect of the written requirements made known by the company Cadwork to the Customer in the context of his obligation to inform;

- improper use of the software or use not in compliance with its documentation or the use for which it is designed;

- modification of the software by the Customer or a third party on the Customer's initiative:

- a change of all or part of the configuration, making it incompatible with the software and was not previously approved by the company Cadwork;

- anomalies due to other software or software packages interfaced with or installed on the use configuration;

- anomalies due to the configuration or operating system;

- incidents or accidents such as explosion, natural disasters, acts of war, riots or terrorist attacks and any event considered to be a case of force majeure or an act of a third party.

35. In the event that one of the aforesaid events is the cause of the work that the company Cadwork has to carry out to repair the software to which this maintenance agreement relates, its work shall be invoiced to the Customer at the rate applicable on the day of the request or, at the express request of the Customer, based on a prior quote.

Article 12.   Methods of Assistance

36. Assistance is provided by one of the following methods:

- a phone procedure;

- remote maintenance;

- an on-site call (at the tariff in force or at the Customer's express request, based on a prior quote).

12.1 Phone Procedure;

37. The diagnosis and, when this is possible, the corrective maintenance are initially carried out by phone support, i.e. "Hotline"

38. The hotline is available to the Customer during the working hours and days specified on the Cadwork website.

39. It is for the Customer to refer to the application's documentation before each phone call, and to precisely and exhaustively describe the symptoms of the problem encountered.

12.2 Remote Maintenance

40. The corrective and perfective maintenance services defined in this contract are carried out remotely using the TeamViewer software or another equivalent tool.

41. For this, the Customer authorises the company Cadwork to connect to its computers so that it can make the useful correction or find a solution for or circumvent an anomaly defined by the Customer.

42. To benefit from the remote maintenance service, the Customer must previously have installed the necessary technical equipment, such as phone lines, modems, and other equipment whose type and characteristics are defined by the company Cadwork on its website.

12.3 On-site Call

43. If the reported anomalies are not corrected by phone assistance then remote assistance, the Customer can request an on-site call by Cadwork teams.

44. The cost of the on-site call is not included in the maintenance service fee.

45. Before each on-site call, the company Cadwork shall, at the express request of the Customer, draw up a quote specifying the proposed charge or shall invoice the on-site call at the tariff applicable. In the case of disagreement between the

parties on the price of the on-site call, the company Cadwork has the right to refuse to go to the Customer's site.

12.4 Response and Correction Times

46. Cadwork shall make every effort to respect the following response times:

    - 4 hours in the case of blocking anomalies.

47. Cadwork shall make every effort to respect the following correction times:

    - five (5) working days, in the case of blocking anomaly or, failing this, supply of a provisional circumventing solution;

    - twenty (20) days for any other type of anomaly or supply of an update or perfective maintenance proposed by the Service Provider and accepted by the Customer.

12.5 Maintenance Register

48. Each request for assistance or correction, whether it is made by phone, remote maintenance or on-site, shall be recorded in a maintenance register.

Article 13.   Personal Data

13.1 Prior formality

49. Each of the parties must deal with the formalities incumbent on it pursuant to regulations relating to the protection of personal data.

13.2 Guarantee

50. Each party provides the other party with the guarantee to respect of the legal and regulatory obligations incumbent in relation to the protection of personal data, notably in matters of cross-border flows outside the European Union.

13.3 Data Protection Law

51. In application of the legislation on the protection of personal data, natural persons whose names are used by each of the parties have the right to make a subject access request, asking whether their personal data is being processed, requesting to access, modify and rectify the data held by each party concerned by the request, at the address of their respective head offices, failing special precisions on the documents collecting information of a personal nature.

13.4 Use

52. Each party grants the other party the possibility of using the exchanged personal data for professional purposes and prospecting by electronic means. This authorisation applies both to itself and contractually-bound partners.

13.5 Subcontracting**:** General Instructions

53. The Customer expressly has reminded the company Cadwork of the strategic and strictly confidential nature of all personal data.

54. Consequently, the company Cadwork acknowledges that all this data and these files are subject to the respect of legislation in the field of the protection of personal data, the protection of privacy and, potentially, professional secrecy.

55. The company Cadwork undertakes to implement all the necessary procedures to ensure confidentiality and optimum security.

56. The company Cadwork undertakes to take all necessary measures to ensure it and its staff respect these obligations and notably:

    - not to process, consult the contained data or files for purposes other than the performance of the services that it provides for the Customer pursuant to this agreement;

    - to only process and/or consult the data in the context of instructions and authorisation received from the Customer;

    - not to insert external data into the files; to take all measures to prevent intentional misuse or malicious or fraudulent use of the data or files;

    - to prohibit the consultation and/or processing of data, other than that concerned by this agreement, even if access to this data is technically possible.

57. Moreover, the company Cadwork is prohibited from:

    - disclosing in any form whatsoever, all or part of the data used;

    - copying or storing, in any form whatsoever and to any end whatsoever, all or part of the information and data contained on the media or in the documents that have been entrusted to it or that have come into its hands during the performance of this contract.

58. The company Cadwork undertakes to take all useful precautions as regards the nature of the data and the risks presented by the processing, to protect the security of the data contained in the files and notably prevent any deforming, damage, loss or access by third parties who have not been previously authorised.

59. The means implemented by the company Cadwork, designed to ensure the security and confidentiality of the data, are defined on www.cadwork.com Customer Area.

60. The company Cadwork undertakes to maintain its means throughout the performance of this contract and, failing this, to immediately notify the Customer.

61. In any event, the company Cadwork undertakes, in the case of change in the means designed to ensure the security sand

confidentiality of the data and files, to replace them by more effective means.

62. The company Cadwork acknowledges and accepts to act in respect to the processing of the data and files, to which it may have access, in compliance with this agreement.

63. The parties agree to define the concept of instruction as being when the company Cadwork acts in the framework of the performance of this agreement.

64. The company Cadwork may not subcontract all or part of the services, notably to a country that is not located within the European Union, without the Customer's prior express agreement in writing.

Article 14. Collaboration

65. The parties agree to closely collaborate in the context of their relations.

66. The Customer undertakes to maintain active and ongoing collaboration providing the company Cadwork with all the elements that it requests.

67. The company Cadwork also undertakes to communicate all the difficulties that it could evaluate, based on its experience, so that they can be taken into account as rapidly as possible, thus contributing to the success of the whole.

Article 15. Price and Invoicing

68. The price and the invoicing conditions are defined in the appendix "Maintenance details" or Software Offer.

69. The price of subscription for the maintenance may depend on the initial, simultaneous subscription of a licence contract, a separate price scale applying to subscription for just maintenance. At the first subscription once the year has begun, the maintenance is invoiced pro rata temporis until 31 December of the current year.

70. The prices are indicated excluding tax, notably VAT, which is charged in addition at the rate applicable on the day of invoicing.

Article 16. Price Review

71. The prices are reviewed and reassessed annually according to the following formula:

- $P(t) = P(t-1) \times [(S(t) / S(t-1))]$, in which:
  - $P(t-1)$ is the basic price or the price corresponding to the last price review;
  - $P(t)$ is the price after review;
  - $S(t-1)$ is the last Syntec index known on the day of signing;
  - $S(t)$ is the Syntec index on the date of signing when the index corresponds to the date of the last price review.

72. The value and the date of the original index are specified in the appendix "Maintenance details" or Software Offer. The parties agree and accept that if the implementation of the chosen index leads, by applying the aforesaid formula, to a reduction in the prices, the last price applicable between them shall continue to apply, without prejudice to a reassessment in the same conditions the following year.

73. IN THE CASE OF DISAPPEARANCE OF THE REVIEW INDEX AND FAILING AGREEMENT ON THE NEW INDEX, EXPRESS COMPETENCE IS GRANTED TO THE PRESIDENT OF THE PARIS COMMERCIAL COURT TO DEFINE AN INDEX WHICH WILL BE INTEGRATED INTO THE PRICE REVIEW FORMULA.

74. This index must be chosen in such a way that it is as close as possible to the index that has disappeared and that it respects the spirit in which the parties agreed to define this when establishing this price review clause.

Article 17. Interest for Late Payment and Indemnity for Recovery Expenses

75. Should the client not pay all or part of an invoice issued by the company Cadwork within the aforesaid time limit, the latter shall be able, at its discretion, to apply the following penalties for late payment, without prejudice to its right to claim compensation for the harm suffered due to the said late payment.

76. In the case of failure to pay by the due date, interest for late payment shall be applied, calculated on the basis of the interest rate applied by the Central European Bank to its most recent refinancing operation, plus 10 percentage points.

77. It is proposed to retain the ECB increased rate depending on the current evaluations of rates.

78. In addition the parties agree that the amount of the fixed indemnity for recovery expenses for each invoice is fixed at 40 Euros/45 CHF.

Article 18. Suspension

79. In the case of non-respect by the Customer of its payment obligations still not performed after Cadwork has sent a registered letter with request for acknowledgement of receipt repeating the payment request, Cadwork reserves the right to suspend the service as of right and without notice.

80. The access to the services shall be suspended until full payment by the Client of all the sums due to Cadwork for the said services, without prejudice to the termination of the contract and/or payment of an indemnity for the costs and its own prejudice suffered as a result of to this late payment.

Article 19. Guarantees

81. Cadwork provides the guarantee that all the intellectual property rights on the software and all the documentation relating to it belong to it and, consequently, holds the Customer harmless in respect to all pecuniary consequences

resulting from legal action for infringement, or unfair or parasitic competition by a third party.

82. In this respect, Cadwork shall bear all damages that the Customer may be ordered to pay by a definitive court decision based on the demonstration of infringement of the intellectual property right linked to part or all of the software and/or unfair or parasitic competition.

Article 20.   Liability

83. By joint agreement, the parties expressly agree that the liability of the company Cadwork shall only be incurred in respect to the Customer in the case of proven fault.

84. The liability of Cadwork shall not be incurred if the version held by the Customer on the day of the implementation of the maintenance services does not comply with those for which the maintenance service is available in compliance with the article "Technical Scope" of this agreement.

85. The liability of Cadwork shall not be incurred in the context of this contract in the case of termination of the maintenance agreement.

Article 21.   Damage

86. By joint agreement, the parties agree that the responsibility of the company Cadwork is only incurred for the consequences of direct damage and compensation for consequential damage is excluded.

87. The liability of the company Cadwork is, by joint agreement, limited to the sums effectively paid by the Customer during the last twelve months prior to the occurrence of the damage.

88. This clause remains applicable should these contractual relations be declared null, void, or terminated for any reason whatsoever.

Article 22.   Insurance

89. The Customer certifies to have taken out an insurance policy with an insurance company known to be solvent and established in France covering all pecuniary consequences of its professional, tortuous and/or contractual liability due to bodily injury, material or non-pecuniary damage caused to Cadwork and any third party in the context of the performance of this contract..

90. In this respect the Customer undertakes to pay the premiums and contributions relating to the said insurance policy and generally to respect all the obligations in order to cover all the activities relating to this contact.

91. The Client must be able to present, upon simple request by the company Cadwork, a certificate dated and signed by its insurer providing proof of professional liability insurance, whose premiums are payable by it, covering bodily injury, material and non-pecuniary damage. This certificate shall specify the amount and scope of the policy and the period of validity of the coverages taken out.

92. The Customer's liability shall not be limited or extended because it has provided the company Cadwork with the certificates for the insurance it has taken out.

93. The Company Cadwork waives and undertakes to have its insurers waive any recourse against and any calling into question of the liability of the company Cadwork except in the case of serious or intentional negligence or misconduct

Article 23.   Ownership

94. The company Cadwork shall be the sole owner of the corrections and perfections that it implements. This contract does not imply any transfer of ownership to the Customer.

95. The company Cadwork shall grant the Customer an irrevocable non-exclusive, non-transferable licence on the corrections and perfections as they are implemented, for the territory of the European Union, for the use of the software by it in the conditions of duration defined in the general conditions of the software licence and, if appropriate, in the special licence conditions concluded with the Customer prior to or at the same time as this contract.

96. The cost of the license for these elements is included in the price defined in this contract.

Article 24.   Sub-contracting

97. This contract shall be subcontracted by the company Cadwork.

Article 25.   Commercial References

98. The company Cadwork shall be able to cite the Customer's name as commercial reference in accordance with commercial practices.

Article 26.   Confidentiality

99. In the context of this contract, all information is confidential and this applies to all information or data communicated by the parties in writing or verbally.

100. The parties naturally undertake to:

- process the confidential information with the same level of protection that it gives to its own confidential information of the same importance;

- keep the information confidential and ensure that it is not disclosed or likely to be disclosed directly or indirectly to any third party.

- not to infringe, in any way, the property rights associated with the confidential information;

- ensure that the confidential information is not copied, reproduced and/or duplicated, partly or fully, when such copies, reproductions or duplicates are not directly linked to the performance of this contract.

101. The parties expressly agree not to infringe, in any way, the property rights associated with the confidential information.

26.1 Termination for Fault

102. In the case of failure by one of the parties to perform the obligations of this contract, not remedied within a time limit of one fortnight as of the sending of a registered letter with request for acknowledgement of receipt notifying the failure in question, the other party shall be able to declare as of right the contract to be terminated or void without prejudice to any damages that it may claim pursuant to this contract.

26.2 Termination as of Right for Lack of Licence

103. It is specified that the sole purpose of this maintenance contract is to provide corrective and perfective maintenance services on the software. Consequently, in the case of termination or lapse of the general and special license conditions, this maintenance contract shall no longer have any purpose and shall be terminated as of right by Cadwork without notice

26.3 Compensation for Termination

104. In the event that the contract is terminated as of right due to lapse or termination of the general and special licence conditions, as specified in the article "Termination as of right for lack of licence", or if the version of the software held by the Customer does not correspond to that for which the maintenance service is available in compliance with the article "Technical Scope" of this contract, an indemnity for termination of this maintenance contract must be paid by the Customer to Cadwork.

105. The amount of this indemnity corresponds to the amount remaining to be paid by the Customer to Cadwork for the maintenance services until the date of expiry of the maintenance contract in compliance with the article "Duration" of this contract.

Article 27.   Force Majeure

106. Initially, cases of force majeure shall suspend the performance of the contract.

107. If the cases of force majeure last longer than two months, this contract shall automatically be terminated, unless otherwise agreed by the parties.

108. It is expressly considered that cases of force majeure or fortuitous cases are those habitually retained by case law of the French courts and tribunals.

Article 28.   Good Faith

109. The parties agree to perform their obligations in perfect good faith.

Article 29.   Tolerance

110. The parties both agree that the fact that one of the parties tolerates a situation does not have the effect of granting the other party acquired rights.

111. Moreover, such tolerance may not be interpreted as a waiver to assert the rights in question.

Article 30.   Sincerity

112. The parties declare these undertakings to be sincere.

113. In this respect, they declare not to know of anything that, if it had been made known, would have modified the agreement of the other party.

Article 31.   Independence of the Parties

114. The parties recognise that they each act on their own behalf as parties independent of each other.

115. This contract does not constitute an association, a franchise or a contract of agency granted by one of the parties to the other party.

116. Neither party may make a commitment in the name of and on behalf of the other party.

117. In addition, each party is alone responsible for its acts, allegations, undertakings, services, products and staff.

Article 32.   Headings

118. In the case of difficulties in interpretation resulting from a contradiction between any one of the headings at the top of the clauses and any one of the clauses, the headings shall be declared inexistent.

Article 33.   Nullity

119. If one or more stipulations of this contract are held to be non valid or declared to be non valid in application of a law, a regulation or following a decision that has acquired the force of final decision of a competent court, the other stipulations shall retain their full force and reach.

Article 34.   Entirety

120. This contract expresses the entirety of the obligations of the parties.

121. No general or specific condition in the documents sent or passed on by the parties shall be integrated into this contract.

Article 35.   Conciliation

122. In the case of difficulty of any kind, before any court proceedings, each of the parties undertakes to meet the other party, on the initiative of one of the parties, within eight

days as of receipt of the letter requesting the conciliation meeting, to find an amicable solution to the disagreements.

123. This clause is legally independent of this contract. It continues to apply despite these contractual relations being declared null, void or terminated for any reason whatsoever.

Article 36.   Transfer of the contract

124. This contract shall not be fully or partly transferred, whether for payment or free of charge, by one of the parties, without the prior written agreement of the other party.

Article 37.   Language

125. This contract is drafted in French, German and English.

126. In the case of conflict between the parties, only the contract drafted in French shall be considered to be good evidence.

Article 38.   Domiciliation

127. For the performance of this agreement and unless special provisions, the parties agree to send all correspondence to their respective registered offices.

Article 39.   Applicable Law

128. This contract is governed by Swiss law, when the maintenance is agreed with the company Cadwork SA, by French law when the maintenance is agreed with the company Cadwork France.

129. The same applies for the rules on content and the rules on form and this notwithstanding the places of performance of substantial or incidental obligations.

Article 40.   Competent Court

130. IN THE CASE OF DISPUTE, EXPRESS COMPETENCE IS ATTRIBUTED:

- WHEN THE LICENCE IS AGREED WITH CADWORK SA TO THE COMPETENT COURT OF THE CANTON OF VAUD, NOTWITHSTANDING MORE THAN ONE DEFENDANT OR INTRODUCTION OF THIRD PARTIES;

- WHEN THE MAINTENANCE IS AGREED WITH CADWORK FRANCE TO THE COMPETENT COURT OF PARIS, NOTWITHSTANDING MORE THAN ONE DEFENDANT OR INTRODUCTION OF THIRD PARTIES.

Article 41.   List of Appendices

131. The appendices to this contract are as follows:

- Appendix 1: Maintenance details or Software Offer