



General Terms and Conditions for the supply of software and the delivery of services

The present General Terms and Conditions for the supply of software and the delivery of services (hereinafter "Contract Terms") shall govern all particularities as required for and relevant to the legal relationship between the contracting parties. All names of persons apply to both sexes.

For the purpose of the present Contract Terms, "**EPLAN**" shall mean the EPLAN entity specified in the relevant order confirmation, on the basis of which this entity enters into a contract with the Customer (hereinafter II EPLAN II).

For the purpose of the present Contract Terms, "**Customer**" shall mean the company, the trader, the legal entity under private or public law, or the public institution, which is specified in the order confirmation as the co-contracting party of EPLAN (hereinafter the "Customer").

For the purpose of the present Contract Terms, "**Affiliated enterprises**" shall mean legally independent commercial companies that a) own the majority of the shares or voting rights in another commercial company (majority interest) and commercial companies that are subject to such a majority interest, or b) are able to exercise a direct or indirect controlling influence over another commercial company (control relationship) and commercial companies that are subject to such control, or c) are subject to a common management or have another interdependent relationship (group relationship) (hereinafter "Affiliated enterprises II").

A. Principles of the business relationship between the Customer and EPLAN

1. Subject of the contract

- 1.1. The subject of the contract is set out in the respective order confirmation from EPLAN, along with the documents and agreements specified therein, including the present Contract Terms.
- 1.2. Quotes that derogate from the order confirmation, as well as all and any other draft agreements for the assessment of the business relationship that have been exchanged between the contracting parties during the course of the negotiations, shall be non-binding, including in respect of prices, quantities, delivery dates, delivery options, technical details, specifications and quality descriptions.

2. Applicability of the present Contract Terms

- 2.1. In addition to the order confirmation, the present Contract Terms shall constitute the basis of all legal transactions between EPLAN and the respective Customer. They shall consequently govern the legal relationship
- 2.2. Any derogating and/or contradictory contract clauses of the Customer's shall not be accepted, irrespective of whether or not they imply a material change to the order confirmation and irrespective of the acceptance and payment by the Customer of EPLAN's supplies and services delivered.
- 2.3. Notwithstanding the above, the present Contract Terms shall prevail at all times, unless the contracting parties agree otherwise.

3. Prices, fee and other costs



- 3.1. All prices and licence fees stated and agreed in the quote upon the conclusion of the contract (hereinafter "Prices") shall be " EXW " (INCOTERMS 2010) and shall not include packing and insurance costs.
- 3.2. The fee for the installation, training, software maintenance and advice shall be stated separately based on EPLAN's Prices in force at the time the contract is concluded (hereinafter "fee") and, unless otherwise agreed, shall be on a time and material basis, i.e. they shall be billed per hour and/or day.
- 3.3. If applicable, all prices and the fee shall be exclusive of VAT and other applicable taxes, levies, charges and duties.
- 3.4. For the delivery of services and work in compliance with Chapter B., Section II. below, one per diem rate shall comprise eight (8) hours of work. All of the above time spent shall be billed at 1/8th of the per diem rate per hour. Travel time shall be billed as working hours. The basis for determining the travel time and travel expenses shall be the office location of the employees called upon by EPLAN from time to time.
- 3.5. All travel expenses and other relevant expenses (e.g. accommodation, courier and translation services) incurred by EPLAN as part of the delivery of the contractual services shall be billed up to the amount of the actual expenses incurred, corroborated by the relevant supporting documents. Where EPLAN offers a flat rate sum by way of fee, the said flat rate sum shall replace the settlement based on the actual costs incurred.

4. Payment, netting and right of retention

- 4.1. Unless otherwise agreed, the billed amounts of the prices and the remuneration owed to EPLAN shall be due and payable a) within thirty (30) days after receipt by the Customer of the invoice without any deduction and b) by bank transfer to EPLAN's bank account. Unless the Customer is able to prove otherwise, invoices shall be deemed to have been received three (3) days after they were issued. After this payment term has expired, the Customer shall be in default.
 - 4.1.1. Amounts not paid on their due date shall automatically, without any notice of default being required, incur interest at the rate of 10% per year.
 - 4.1.2. In the event of non-payment of the invoice amounts on the due date, the customer shall automatically and without notice of default owe a fixed compensation equal to 10% of the unpaid amounts.
 - 4.1.3. Failure to pay one or more invoices in full on the due date authorizes us to suspend the execution of other orders without any formality and subject to compensation.
- 4.2. The Customer shall be allowed to net payment claims from EPLAN only against claims that are undisputed or that have become final and certain. The Customer shall have a right of retention only insofar as this is based on the same legal transaction.

5. Type, scope and location of supplies and services

- 5.1. Software shall be supplied by EPLAN at its own discretion, either:

- a. in physical form on a machine-readable data carrier "EXW of Supply Centre" (INCOTERMS 2010), whereby EPLAN shall determine the type of dispatch, the transport route and the carrier; or
- b. in intangible form, i.e. over the Internet, downloadable via a link provided by EPLAN that gives access to systems made available by EPLAN for downloading a copy of the relevant software. The respective link, along with further information for downloading, shall be sent to the Customer immediately after the contract has been concluded.

The quality of the supplies and the services shall be exclusively governed by the specification of services or the technical specifications in force at the time of the conclusion of the contract and available to the Customer, as well as by the relevant documentation provided to the Customer along with the supplies and services.

- 5.2. Partial supplies shall be permitted insofar as they are reasonable to the Customer.
- 5.3. Software shall be supplied solely in a machine-readable object code or, in an SAP environment, in ABAP form, and only for the contractually agreed use. The Customer shall not be permitted to lay claim to disclosure or use of the source code. Unless expressly otherwise agreed in writing, the source code shall not be part of the contract.
- 5.4. The delivery of services and work, such as installation, execution, customisation, modification, advice, training and other support shall be based on the more detailed provisions of Chapter B., Section II. et seq. below.
- 5.5. In the event of a physical supply, the point in time that applies for compliance with the delivery period and the transfer of risk shall be the point in time when EPLAN hands over the data carrier and the documentation to the carrier, and otherwise the point in time when the software is ready to be downloaded in compliance with Chapter A, paragraph 5.1 above and EPLAN has transmitted the information about the download to the Customer.
- 5.6. Unless expressly otherwise agreed in the contract, all delivery times shall be non-binding and indicative. They shall depend on the timely delivery to EPLAN by its own suppliers (where applicable).
- 5.7. Where an expressly agreed delivery time is exceeded for reasons for which EPLAN is responsible, the Customer shall set EPLAN a time limit of at least one (1) week in writing.
- 5.8. As long as EPLAN a) waits for the Customer's assistance or for information from the Customer or b) the delivery of EPLAN's work services is hampered by strikes or lock-outs at third party companies or at its own company (in the latter case, however, only if the industrial dispute is legal), by official interventions, legal prohibitions or other circumstances for which EPLAN is not responsible ("force majeure"), all terms for supplies and the delivery of services shall be deemed to be extended by the duration of the impediment and a reasonable start-up period after the end of the impediment ("impediment time"), and there shall be no dereliction of duty on the part of EPLAN for the duration of the impediment time. EPLAN shall immediately inform the Customer of such impediments and the expected duration thereof. Where an instance of force majeure persists for an uninterrupted period of more than three (3) months, both contracting parties shall be exempt from their performance obligations.

5.9. The performance of the contract by EPLAN shall be contingent on EPLAN not breaching any national and international regulations on exports and foreign trade and EPLAN not breaching existing sanctions or embargoes.

6. Obligations incumbent on the Customer in respect of assistance and the supply of information

6.1. The Customer alone shall be responsible for the required hardware and software environment with regard to the supplies and services to be provided by EPLAN. This shall also apply to the system requirements and the handling of the software by the Customer's employees and other personnel.

6.2. The Customer shall be responsible for providing an adequately dimensioned hardware and software environment, also taking into account the additional demands placed on this environment as a result of the supplies and services.

6.3. Before using them, the Customer shall thoroughly test all supplies and services for the absence of defects and their usability in the existing hardware and software configuration. This shall equally apply to supplies and services provided to the Customer within the framework of the guarantee and maintenance.

6.4. The Customer shall observe the instructions and minimum requirements as communicated by EPLAN in respect of the installation and the use of the supplies and services.

6.5. The Customer shall provide all the requirements and parameters - free of charge and to the extent required - that are necessary for a contractual use of the supplies and services, for example personnel, working space and access thereto, as well as hardware and software, data and telecommunication systems.

6.6. In order to enable EPLAN to remedy malfunctions in the best possible way and as swiftly as possible, the Customer shall, in the context of resolving the problem and repairing the malfunction, grant EPLAN access to EPLAN's supplies and services, more specifically software and components thereof. If necessary, the contracting parties shall enter into agreements and put in place security measures to ensure the protection of data.

6.7. The Customer hereby warrants that the Customer shall, at reasonable intervals that are adequate for the application, make a regular back-up of its data within the limits of the general legal, business, management and organisational principles, in particular the principles of IT security and compliance.

EPLAN is given access as detailed above and for the aforesaid purposes, the Customer shall make a back-up of the affected data (e.g. project files) in the manner described above. A regular data back-up shall be considered to be 'adequate for application' if, depending on the sensitivity and relevance of the data, it ensures - at a reasonable cost - the immediate recovery or restoration in the short term of the situation that existed before the access.

7. Guarantee; Limitation

7.1. Only the performance characteristics agreed in writing, as well as the scope of the services, including the statement that the contractual use of these services does not conflict with the rights

of third parties, shall constitute the basis for the supplies and services. The Customer is to inspect the supplies and services immediately upon receipt and promptly inform EPLAN of visible defects and hidden flaws immediately after these have been discovered. Where he fails to do so, the supplies and services shall be deemed to have been approved free from defects. Defects are to be documented in an understandable form and notified to EPLAN in such a way that EPLAN is able to rectify the defect without delay after it has become aware thereof and after all relevant and useful information has been provided. The Customer shall put in place all reasonable measures to facilitate the discovery of defects and their causes.

- 7.2. With regard to supplies and services, EPLAN hereby warrants, in compliance with the provisions below, that the performance characteristics agreed in the contract are fulfilled and they comply with the agreed scope of performance, and that no third party rights exist that conflict with the use of this performance insofar as contractually agreed. Agreements relating to the quality of the supplies and services constitute service specifications; they do not constitute a guarantee of quality or durability. The Customer shall be allowed to assert warranty claims only in respect of defects that are repeatable or that may be otherwise established. The Customer shall document such defects in an understandable form and submit the notification of the defect, along with the documentation, including all useful information known to the Customer, to EPLAN immediately after it has become aware of the defect. The Customer shall put in place all reasonable measures to facilitate the identification of the defects and their causes.
- 7.3. Where EPLAN is under obligation to repair defects, EPLAN shall be free, at its own discretion, to repair physical defects in the form of, respectively, a later fulfilment of its obligations, a new supply of the software, of the supplies and services, or by demonstrating or providing a reasonable alternative solution that is suitable to avert the effects of the defect.
- 7.4. In the event of legal shortcomings, EPLAN shall still fulfil its obligations. To this end, EPLAN shall, at its own discretion, offer the Customer a legally unassailable possibility to use the supplies and services.
- 7.5. The guarantee relates to the most recent version of the software issued by EPLAN from time to time (hereinafter "new version"). A new version (i.e. any new software version relating to supplies and services, in particular updates, hotfixes, patches, service packs, etc., but excluding other modules, elements, products, add-ins and add-ons) shall be accepted by the Customer, provided that the said new version is suitable to avert or remedy defects, that the contractual scope is maintained and the acceptance does not lead to significant disadvantages for the Customer.
- 7.6. EPLAN shall be free to make the later fulfilment of its obligations contingent on payment by the Customer of at least a reasonable portion of the price or fee.
- 7.7. Where later performance fails within a reasonable period of time, the Customer may dissolve the contract or reduce the price or the fee on the condition that the Customer has set EPLAN a written term for the repair of the defect and the said term has expired without result. EPLAN shall pay damages or a sum in compensation of pointless expenses for a defect within the limits of the compensation set out in in the contract.
- 7.8. The warranty claims of the Customer shall not apply for supplies and services that are changed by the Customer or that are used in a system environment other than the intended or contractually

agreed system environment. The Customer is free to deliver proof that the defect was not caused by such use.

7.9. The limitation period for all claims under the present article seven shall be one (1) year from the date on which the contract was entered into.

8. Liability

8.1. To the exclusion of any additional liability, EPLAN shall be liable for all loss or damage caused by EPLAN or its agents with intent, through gross negligence or through negligent breach of material contractual obligations. "Material obligations" shall mean obligations which are first and foremost intended to enable the contract to be dutifully and appropriately performed and whereby the other contracting party may assume that they are being fulfilled.

8.2. Liability under peremptory statutory provisions, as well as liability for death, physical injury and health impairment, and in respect of claims arising from product liability, insofar as special statutory provisions in the legal system apply in compliance with section A, paragraph 10.4, or warranties, shall remain unaffected by the above limitations of liability.

8.3. In the event of a breach of non-material obligations, EPLAN shall be liable for the property and financial loss resulting therefrom, as may generally and reasonably be expected when entering into the contract. The applicable standard for this is the sum total of the prices and/or the fee for EPLAN as agreed in the respective contract, if such sum total can be determined or, if such sum total cannot be determined (for example due to an indefinite term), the total fee or the average monthly fee that was paid to EPLAN within the twelve (12) months prior to the occurrence of the loss. The Customer shall be free to prove that EPLAN should have expected higher loss.

8.4. In all other cases, liability is excluded. This also applies to indirect loss, consequential loss or loss of profit.

8.5. EPLAN reserves the right to invoke a joint liability.

9. Confidentiality and data protection

9.1. The contracting parties shall be required to uphold due confidentiality of all information of a technical, financial or other commercial or confidential nature which they have received, whether directly or indirectly, as part of the respective contract and the performance thereof, and shall not disclose any such information to third parties. Affiliated companies of a contracting party are not considered as third parties. In addition, the contracting parties shall not use information obtained for purposes other than those expressly stated in the contract.

9.2. These confidentiality obligations do not apply to information that is in the public domain, that is already known to a party, that was lawfully obtained by a party from a third party, or that a party has developed itself without there being any breach of the confidentiality obligations. The party invoking the above shall assume the burden of proof.

9.3. These obligations of comprehensive confidentiality and secrecy shall continue to apply after the respective contract has ended.



- 9.4. EPLAN shall be permitted to collect, process and store personal data of the Customer in compliance with the provisions of the applicable data protection legislation, guidelines and other provisions.
- 9.5. Where EPLAN analyses Customer Data, EPLAN shall only do so within the permissible scope of the legislation in the area of data protection.
- 9.6. EPLAN furthermore warrants that all EPLAN employees have undertaken in writing to keep the data confidential and to treat them as strictly confidential in compliance with the applicable laws on data protection, telecommunications and other applicable laws.

10. Final provisions

- 10.1. EPLAN shall be free, at its own discretion and in observance of the legitimate interests of the Customer, to assign sub-contractors selected by EPLAN to perform services. EPLAN shall be liable for the performance of its sub-contractors as though the services rendered were rendered by EPLAN¹.
- 10.2. All amendments and additions to the present Contract Terms must be made in writing (including by fax and e-mail) in order to be valid in law and must be expressly specified as such. This also applies to any changes to the present clause. No verbal side agreements were made.
- 10.3. If any of the provisions of the present Contract Terms should be or become ineffective, contain an impermissible term or contain a loophole, this shall not affect the validity of the remaining provisions. In that case, the contracting parties shall replace the ineffective provision by a provision that is valid in law and is as close as possible to the economic and legal intentions of the contracting parties.
- 10.4. The present Contract Terms and the full legal relationships between the contracting parties shall be governed by Belgian law, to the exclusion of the United Nations Convention on contracts for the International Sale of Goods and international private law, as well as its provisions on choice of law and conflicts of law.
- 10.5. The place of jurisdiction for all disputes arising from or in connection with the present Contract Terms shall be EPLAN's headquarters. EPLAN shall equally be free to litigate at the place where the contracting party's registered office is located.
- 10.6. The respective contract may not be transferred or assigned to a third party without the prior written consent of EPLAN (which may not be withheld on unreasonable grounds), unless the transferee or assignee is a legal successor to the assignor or the assignee as a result of a merger, a transfer, a consolidation, a takeover, a legal restructuring, a sale of assets or a purchase of a substantial part of the assets to which the present Contract Terms relate. In the latter cases the Customer shall be under obligation to pay EPLAN a reinstatement fee, with the Customer accepting that the annual fee for the software shall be adjusted in line with the price list applicable at that time. In all cases, EPLAN shall assist with the transfer or the transmission of the contract only after all outstanding invoices of the Customer have been paid in full.

B. Specific provisions concerning the business relationship between the Customer and EPLAN

I. Standard software; third party software

1. Principles

- 1.1. For the purpose of the present Contract Terms, "standard software" - with the inclusion of the relevant application documentation - shall mean all software and software products, i.e. programs, program modules, applications, tools, elements and other prefabricated solutions, etc., that have been developed for and/or provided to various customers with their own needs in the respective market. In essence, "standard software" in particular includes all products offered or intended to be offered by EPLAN on the market at EPLAN prices, or which otherwise are not exclusively developed for and provided to individual customers (hereinafter "standard software").
- 1.2. For the purpose of the present Contract Terms, "software from other manufacturers" shall mean all software and/or software components not developed by EPLAN and/or in the framework of which EPLAN is not an author or co-author and/or owner (hereinafter "third party software").
- 1.3. "Third Party Software" as defined in Chapter B., Section II., paragraph 1.2 above in particular encapsulates all open-source software (hereinafter "OSS").
- 1.4. Where the software has defined namespaces, the namespace of the manufacturer or EPLAN, as applicable, shall be deemed to be standard software. Any development outside the scope of such namespace shall not be deemed to be standard software.

2. Granting of user rights and licence rights

- 2.1. EPLAN shall grant the Customer the relevant user rights ("licence") in respect of the standard software in compliance with the provisions of the present Contract Terms and EPLAN's licence model in force at the time when the contract is entered into. Any use of the standard software outside this scope is prohibited and shall always require the express written consent of EPLAN.
- 2.2. EPLAN shall, in any case exclusively limited to internal application purposes, grant the Customer the following licences upon conclusion of the contract, in compliance with the respective licensing terms set out in the contract and subject to the suspensive condition of payment in full of the invoice in question:
 - a) **'Single-user licence'**: a non-exclusive right of use, unlimited in time, but restricted in terms of content and space to one installation on single-user hardware; or
 - b) **'Network licence'**: a non-exclusive right of use, unlimited in time, but restricted in terms of content and space to the installation on multiple computers within the internal network and exclusively for the country where the Customer has its registered office as specified in the contract. In this respect, the maximum number of parallel uses shall be determined by the number of purchased and activated licences managed by licence management software provided by EPLAN. Where the registered office is located inside the European Economic Area (EEA), the licence shall be valid throughout the EEA; or
 - c) **'WAN licence'**: if the Customer purchases a 'WAN net licence' while the provisions of paragraph (b) above apply, worldwide use shall be permitted; or

- d) **'Named user licence'**: the software may be used only by registered users specified by name. Any additional or other restrictions arising from this type of licence, more specifically the inclusion of products in product families, shall result from the relevant documentation.
- 2.3. "Internal application purposes" encapsulates the finalisation of the Customer's own business transactions and the business transactions of the Customer's Affiliated enterprises. EPLAN's prior written consent shall be required, in particular for (i) the operation of a computer centre for third parties or (ii) the delivery for temporary use of the standard software (e.g. in the form of Application Service Providing) to persons and entities other than Affiliated enterprises, or (iii) the use of the standard software to train persons other than employees or other personnel of the Customer or of its Affiliated Enterprises. The operation by an authorised third party, under the control of and exclusively for the benefit of the Customer (IT outsourcing, hosting) shall be permitted. The use by the Customer of technical solutions by which the Customer seeks to obtain a use beyond the scope of the licence purchased, more specifically via dongle servers and remote maintenance software, shall not be permitted.
- 2.4. The transfer of the standard software and the transfer of the user rights to third parties shall be permitted only if the Customer has been granted, in advance, permanent user rights, unlimited in time, in respect of the standard software and if the user rights are transferred to the third party with the scope and composition previously obtained by the Customer. Consequently, the standard software may be transferred to the third party only in a uniform and comprehensive manner, with the inclusion of all documentation and all other relevant materials. No temporary transfer, leasing or rental shall be permitted. Any partial transfer of the standard software, or components thereof, to third parties or the transfer of the same standard software to several third parties shall be prohibited, except in cases where this is expressly permitted by law.

In the event of a permissible transfer, the Customer shall ensure, and provide written proof thereof at EPLAN's request, that:

- the third party has undertaken to comply with the present Contract Terms and the rights of use or the limitations of such use granted therein;
- the standard software, dongles, serial numbers (if any), the documentation, and other materials provided along with the standard software, with the inclusion of copies, updates and previous versions, have been transferred to the third party;
- the Customer no longer holds any copies, including back-ups;
- EPLAN has been informed of the transfer and the third party, stating the respective serial numbers and licence keys of the respective standard software; and
- the re-registration of the serial numbers and licence keys for the third party was requested by EPLAN.

Upon transfer, all of the Customer's rights of use in respect of the standard software shall cease to apply.

A transfer of the standard software that is permitted subject to the above requirements shall not automatically lead to a transfer or assignment of warranty claims or a maintenance contract for the standard software that may exist in the relationship between the Customer and EPLAN.

- 2.5. The standard software may be copied only in the number of copies required for the contractual use. The Customer may prepare the required number of back-ups of the standard software in accordance with the state of the art. Back-ups on removable data carriers shall be marked as such, be made to carry the copyright notice of the original data carrier, be properly documented in terms of the number and storage location of the said copies, and shall be transferred to EPLAN in response to the latter's request. Where the Customer has obtained the standard software via an online download, the Customer shall be allowed to copy the standard software onto a data carrier. The rights to and in connection with such online copies shall be governed by the present Contract Terms.
- 2.6. The Customer shall be allowed to only make those changes, extensions and other modifications to the standard software that are permitted within the confines of applicable law and established case law, i.e.,
 - a) in particular, decompilations to achieve interoperability with other hardware and software; or
 - b) that are necessary for the intended use and for remedying malfunctions; or
 - c) which have been expressly agreed by contract. In other respects, the Customer shall not be allowed to make any modifications.
- 2.7. Where EPLAN provides the Customer with a new version in connection with corrections or maintenance that replaces the previously provided contractual objects ("old version"), this new version shall be subject to the provisions of the present Contract Terms.
- 2.8. Where EPLAN provides a new version of the standard software, the rights of the Customer under the respective contract in respect of the old version shall also cease to apply if no express request for the return thereof is forthcoming from EPLAN. However, the Customer shall be free to continue to use the old version for compatibility reasons, provided that customers or suppliers of the Customer are using older versions. This shall not act to increase the total number of licences obtained. However, the Customer shall not be able to lay any claims to software services, in particular the maintenance of this old version. Where the Customer uses the new version with a file originally stored under an old version, the said file can no longer be edited with the old version.
- 2.9. EPLAN shall not assert rights in respect of the Customer's files, documentation and other data that have arisen from the use of the standard software as intended and contractually agreed.

3. Third party software

- 3.1. With respect to third party software, only the terms of use or the general licensing terms of the respective manufacturer shall apply. All third party software is specified in the respective quote by the name and/or product name of the respective manufacturer (e.g., SAP, Autodesk). Normally speaking, quotes also refer to the terms of use of these products.

3.2. Third party software is not part of the software service or other software maintenance services. The provisions of the present Contract Terms in respect of the software service or software maintenance services do not apply to third party software. Third party software shall be governed exclusively by the general terms and conditions of its respective manufacturer.

3.3. The information and documentation required in respect of OSS shall form part of the documentation in respect of the standard software in compliance with Chapter A, paragraph 5.1 b) of the present Contract TermS.

4. Protection against unauthorised reproduction of the software (measures and mechanisms)

4.1. In order to protect its intellectual property, EPLAN may include hardware or software copy protection in all its supplies and services.

4.2. The Customer shall use the software and all its components only as intended and contractually agreed. In particular, it shall carefully protect the transferred hardware copy protection or hardlock, respectively (dongle), against access by third parties. For the purposes of this clause, "third Party" does not include the Customer's employees or other persons at the Customer's premises for the contractual use of the contractual objects.

4.3. The Customer shall not be permitted to change or remove any copyright notices, markings and/or verification numbers or signs of EPLAN or the respective licensor/manufacturer.

4.4. EPLAN shall be free to check, at reasonable intervals, whether the supplies and services are used in compliance with the present Contract Terms. To this end, EPLAN may request information from the Customer, in particular regarding the period and scope of use of supplies and services, and inspect the Customer's accounts and documents, as well as the Customer's hardware and software. To this end, EPLAN must be given full access to the Customer's business premises during normal business hours and must be allowed to use EPLAN software in this connection. EPLAN shall inform the Customer well in advance in writing of such an inspection.

4.5. Where the Customer provides third parties with data carriers, memories or other hardware on which EPLAN software or other related components are stored (in whole or in part, unchanged or adapted), or abandons the direct possession thereof, the Customer shall ensure that the stored EPLAN software or other related components are first wholly and permanently removed.

II. Services and work

1. Delivery of services and work

1.1. With regard to work, EPLAN shall be responsible for the monitoring, management and follow-up of the work performed and the results thereof (hereinafter "work"). Work performed under service contracts (hereinafter "services") is intended to advise and support the Customer. EPLAN shall provide the services under its own responsibility and the Customer shall remain responsible for the results pursued and achieved by the Customer. Estimated prices for services and work on a time and material basis are non-binding. The quantities on which an estimate is based are the result of an assessment of the foreseeable scope of performance carried out to the best of EPLAN 's knowledge based on EPLAN's experience.

- 1.2. When providing the services (hereinafter "services") EPLAN is dependent on the fulfilment by the Customer of the obligations in respect of cooperation arising from the type of service, in particular the obligations outlined in Chapter A, paragraph 6 of the present Contract Terms. Where the Customer fails to comply with the obligations in respect of cooperation, or where its compliance with these obligations is insufficient or late, and where this results in delays and/or loss, EPLAN shall not be liable for such loss or consequential loss resulting therefrom, and the agreed deadlines shall be pushed back by the duration of the delay resulting from the non-compliance, or insufficient compliance, by the Customer. Where extra costs are incurred as a result of the Customer's failure to comply with its obligations in respect of cooperation, EPLAN shall be within its rights to bill these extra costs against its usual terms, notwithstanding additional statutory rights.
- 1.3. The "description of the services" in respect of work, with particular reference to modification programming, personalisation and such like, shall be jointly drawn up and established by the Customer and EPLAN - depending on the type of work - in service specifications, technical specifications or another similar overview (hereinafter "service specifications") before and/or during the work performance in respect of the acceptance thereof.
- 1.4. With regard to work, EPLAN (where agreed) shall demonstrate to the Customer on the deadline date that the work was performed, and acceptance thereof shall take place in the form of a functional test or trial runs in compliance with the parameters agreed in the contract, following the following basic procedure:
 - a) The results of the acceptance shall be recorded in minutes (acceptance protocol) to be jointly drawn up and signed by EPLAN and the Customer, which shall also include a snag list containing the errors established and ranked by the contracting parties; this shall also apply where defects are found to exist.
 - b) Where the Customer fails to conduct immediate acceptance, EPLAN shall be free to set the Customer, in writing, a reasonable term for acceptance of at least one (1) week. After this period has expired, the acceptance shall be deemed to have taken place tacitly if the establishment of the period has been expressly notified to the Customer and the Customer has not given written notice of defects that prevent acceptance up until the expiry of the set period for acceptance. Acceptance shall also be deemed to have taken place if the Customer uses the supplies and services for operational use, i.e. not just for testing purposes, unless trial runs under operating conditions have been expressly agreed upon within the framework of the acceptance procedure.
 - c) Intangible defects, i.e. Category 2 or Category 3 errors (see 1 .5), which do not affect the functionality of the product, shall not give rise to the right to refuse acceptance. All Category 2 or Category 3 errors shall be repaired in accordance with a time schedule to be jointly established by the contracting parties.
 - d) Where the work due by EPLAN can be divided into closed sub-systems that may be accepted separately, the Customer shall accept them if they can be accepted. Any components or sub-systems used by the Customer for operational use shall be deemed to be accepted.
 - e) The procedure set out in this paragraph 1 .4 shall apply in the same manner where the intention is to replace an acceptance with approvals or functional tests, even if these do not need to have the effect of an acceptance.

1.5. Errors in respect of the acceptance shall be ranked into the following categories:

Category 1: the software cannot be used. The error cannot be bypassed in an economically responsible manner by way of organisational or other means.

Category 2: the use of the software is impeded, but the software can still be used. The error can be bypassed in an economically responsible manner by way of organisational or other means.

Category 3: no major impact on functionality and usability. The use of the software is not impeded, or only slightly impeded.

2. Changes in the scope of performance

2.1. Either contracting party may request changes to the agreed scope of performance by written notification to the co-contracting party. Upon receipt of a request for modification, the recipient shall examine whether, and subject to which terms, the modification may be implemented and promptly inform the requesting contracting party in writing of its consent or refusal, stating reasons (as applicable).

Where a change request from the Customer requires a substantial assessment, EPLAN shall inform the Customer thereof prior to starting the assessment. Where the Customer agrees to an assessment by EPLAN, EPLAN shall bill the Customer for the costs involved in conducting the assessment after the Customer's prior written consent.

2.2. Changes to the agreed scope of performance shall become effective only after the conclusion of the relevant contract amendment in compliance with the principles set out in the present Contract Terms. Until such time, EPLAN shall be entitled and under obligation to continue the work pursuant to the existing contract.

2.3. Requests to cancel or change scheduled work must be received in writing fourteen (14) days ahead of the start of the work. Cancellations or changes after this period shall be billed as a flat rate cancellation fee based on 25% of the price of the work. In the event the Customer faces impediments that prevent it from agreeing to EPLAN's proposed timing for the work to be carried out - and provided these are legitimate grounds for which the Customer furnishes the relevant supporting documents - EPLAN may allow a new booking for the work, even beyond the period specified above. In that case, the full invoice amount shall be immediately claimable and payable.

3. Project Manager

The Customer shall appoint an officer in charge who can and shall provide EPLAN with the relevant information and take decisions or have decisions taken in the short term. EPLAN shall also appoint a project manager who has the required expertise and is able to provide adequate information and make decisions in the short term.

4. Property rights, copyrights and rights of use

Unless otherwise specified in the respective contract, the Customer shall be granted an irrevocable, nonexclusive and non-transferable right of use, unlimited in terms of time and territory, in respect of the contractual services. The granting of these rights of use shall be subject to the suspensive condition

of the settlement in full of all EPLAN's claims for payment under the respective contract. Unless otherwise agreed, all property rights, copyrights and other user rights shall remain with EPLAN.

5. Third party materials

The Customer shall offer EPLAN assurances that all materials provided by the Customer to EPLAN as part of the order are not encumbered with rights of third parties that are contrary to the processing by EPLAN. The Customer shall defend, indemnify and hold EPLAN harmless for and against all claims from third parties arising therefrom, except in the event of willful intent or gross negligence by EPLAN or EPLAN's agents.

III. Software service

1. Software service for standard software

EPLAN shall provide software services only for the standard software created by EPLAN that is marked accordingly.

2. Subject of the software service

2.1. For the purpose of the present Contract Terms, "software service" shall mean services/work relating to the maintenance of standard software in compliance with the provisions of the present Contract Terms; the type and scope of the supplies and services to be provided shall be determined by the "software service" level detailed in the respective contract based on the service specifications concerned (hereinafter collectively "software service").

2.2. Changes to the scope of the services must be agreed in writing in order to be valid in law.

2.3. As part of the software service, the Customer shall receive the standard version of the new software versions that are released from time to time.

The Customer alone shall be responsible for implementing customer-specific modifications. Individual programs and customer-specific modifications of the software based on personalisation technologies such as API programming, scripting, individualisation of master data, batch routines, etc. are excluded from the software service. Related work required to maintain operability after new versions of the standard software have been supplied must be ordered and paid for separately.

Software, or components thereof, with namespaces: In the case of software with namespaces, the relevant namespace to distinguish between standard software and customer-specific modifications shall be the namespace of the manufacturer, or of EPLAN. Standard developments shall be made in the namespace of the manufacturer, or of EPLAN, while customer-specific modifications shall be made in the namespace of the Customer.

3. Scope of software service

3.1. During the term of the respective contract, EPLAN shall perform the services/work detailed therein in compliance with the service specifications as applicable on the date of the contract.

3.2. Unless expressly otherwise agreed, the following services shall not be part of the contract and require a separate agreement:

- services for programs not used under the operating conditions defined by EPLAN•
- adaptations of the software to new operating system releases or conversions of the software to operating systems for which the EPLAN software is not generally approved;
- services that become necessary as a result of the licensee's non-compliance with the operating instructions, other forms of operating errors, loss due to negligence or wilful loss or modification of the software or its data carriers;
- services provided at the location of installation;
- training services via the hotline.
- Such services are to be ordered separately on the basis of a corresponding order.

4. Software service fees (service fee)

4.1. The fees shall be calculated as an annual flat rate sum in compliance with the respective contract and shall be billed in advance for the year in question.

4.2. The flat rate sum specified in the contract may be increased by written notification sent three (3) months before the end of a contract year (and for the first time after the first (1 st) contract year has expired). In the event of an increase by more than 10%, the Customer shall be within its rights to terminate the software service in observance of one (1) month's notice before the increase takes effect.

5. Duration of the software service

5.1. The software service is agreed for an initial fixed term of twenty-four (24) months, starting on the date on which the contract takes effect. Upon the expiry of the initial fixed term, the software service shall be automatically renewed for twelve (12) months at a time, unless terminated in writing by one of the contracting parties in observance of three (3) months' notice before the end of the current term. During the respective period, the software service may be terminated only on legitimate grounds.

5.2. The right of the Customer to terminate the contract in case of price increases in compliance with paragraph 4.2 above remains unaffected.

IV. Training

1. Enrolment and confirmation

1.1. The number of participants per training session is limited due to EPLAN's space limitations and in order to efficiently convey the content of the training. For this reason, the relevant enrolments shall be considered in the order in which they enter the EPLAN system.

1.2. Each enrolment shall be confirmed in writing by EPLAN. Along with the confirmation of enrolment, the Customer shall be sent a link enabling it to check the travel plans to the respective training locations, made available online by EPLAN.

2. Training fees

The training fees shall be billed before the start of the training and are claimable and payable within the payment term stated in the invoice. Withdrawals from training sessions must be notified to EPLAN in writing at least fourteen (14) days before the start of the training session. Withdrawals after this period, or absence, shall be billed on a flat rate basis by way of a cancellation fee based on 25% of the price of the training. In the event participants are unable to attend - provided legitimate reasons exist for which the Customer furnishes the relevant supporting documents - EPLAN may allow a new booking for the next training course, even beyond the period specified above. In that case, the full invoice amount shall be immediately claimable and payable. Where the customer is unable to attend, he may also replace participants.

3. Training sessions/training packages

The individual training sessions/training packages must be used within a maximum period of twelve (12) months after EPLAN sent confirmation of enrolment. Otherwise the claim against the organisation of the outstanding training sessions/training packages shall lapse; no claims for reimbursement or netting of payments shall be accepted that were already made after the expiry of the aforesaid twelve-month (12) period.

4. Training service delivery

The training fees include the costs of the training, training materials and meals during the training. EPLAN reserves the right to make/release interim developments of the software, and therefore of the content, as well as to make other minor adjustments to the training programme. Unless otherwise agreed, in the case of training sessions being held at the Customer's premises, the costs of the training materials and meals shall not be included.

5. Cancellation of training sessions

Where a training session/course is cancelled due to the sudden absence of a trainer (e.g. by reason of illness), insufficient participants or force majeure, there shall be no claim against the organisation of the training on the confirmed date. A new date shall promptly be communicated to the Customer. In doing so, any Customer-preferred dates shall be taken into account. In such cases, EPLAN shall not be under obligation to reimburse travel and accommodation expenses or loss of working hours.

6. Copyright

The training documents provided are copyright-protected and may be used only in a personal capacity by the training course participants. These documents and materials may not be copied or published and used in any other manner without EPLAN's prior written permission.

(starting December 2017)