

EXEMPLARY Maintenance Contract

Contract No. _____

between **sample customer**

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Street No.

Zip code Town/City

(hereinafter also referred to as the "Customer")

and **CITYCOMP Service GmbH**

Magirusstraße 7

D73760 Ostfildern (Nellingen)

(hereinafter referred to as CCS)

Article 1 Definitions

1. Machines: all hardware components.
2. Systems: all hard- and software components.

Article 2 Subject matter of the Contract

1. CCS shall take over the maintenance services pursuant to the present Contract for the machines and systems set forth in the Maintenance Certificate through its own technicians.
2. After signature by the Customer, the present Contract shall not come into force until a copy has been countersigned by CCS. Maintenance Certificates are an integral part of the Contract and shall come into force upon being sent to the Customer.

Article 3 Scope of services

1. Repairs

Following diagnosis and failure to treat the defect in question by telephone, CCS shall eliminate the defects in the equipment set forth in the Maintenance Certificate at the place denominated in the Maintenance Certificate.

In order to perform the Contract, CCS has the right to replace machines or systems wholly or in part with equivalent machines or systems or parts of the same type. The consent of the user and/or owner of the machines or systems is required for the replacement of entire machines or systems.

Replaced machines, systems and parts shall become the property of CCS. Installed machines, systems and parts by CCS shall become the property of the Customer after payment has been effected by the Customer.

2. Services billed separately

In addition to the basic maintenance fee, the following services will be billed separately:

- a) work on electronic installations outside the machines or systems,

b) any corrections that may be necessary on account of wrong or improper installation or extension of the machines or systems,

c) adaptation of any extensions that have been made to the machines or systems insofar as they do not correspond to the manufacturer's specifications or were not delivered by CCS,

d) measures to repair or additional maintenance work required on grounds of improper treatment or use of the machines or systems or improper changes or additions,

e) maintenance work which is to be covered by insurance, in particular low-voltage insurance policies,

f) additional maintenance work due to defective installation including the electric power and air-conditioning situation,

g) software support and installation of operating systems and their new releases,

h) maintenance services for machines or systems subject to warranty claims against third parties insofar as these have not yet been included in the CITYCOMP Maintenance Contract,

i) services which are performed at the Customer's request during times outside the time frame agreed in the Maintenance Certificate.

j) consumables like toner, paper, rechargeable batteries, maintenance kits and the content of the maintenance kits, printheads, etc.

3. The period for elimination of defects (Service Level) shall be determined individually in the Maintenance Certificate under SLA.

Article 4 Customer's obligations

1. The Customer shall notify CCS in advance, in writing, of any changes of location or additions to configurations.

2. The Customer itself is responsible for securing data prior to commencement of maintenance services.

3. Accessories and documentation are to be held in safekeeping and are to be enclosed on dismantling. On demand of CCS Customer

customer has to place the accessories and documentations at the disposal of CCS anytime.

Article 5 Prices and terms of payment

1. The Customer shall make payment as set forth in the valid Maintenance Certificate.
2. Value-added tax will be charged separately at the currently applicable rate.
3. Payment for maintenance is to be made in advance on the first day of the period covered in the Maintenance Certificate.
4. Separately charged services fall due for payment immediately on receipt of the invoice, without deductions.
5. Default interest will be charged on late payments at a rate 5% higher than the *Bundesbank* discount rate. The Customer has the onus of proving that a lower loss or no loss at all was incurred through the delay.
6. Payments for incomplete accounting periods will be charged for on a pro rata basis and will fall due additionally with the first payment.
7. CCS has the right to change the maintenance fees and other terms set forth in the Maintenance Certificate by giving ninety (90) days' notice. Should the charges be increased in excess of the inflation rate, the Customer will have the right to terminate the present Contract on the date on which the increase comes into force by giving thirty (30) days' notice to the end of a month.
8. The Customer cannot offset counterclaims unless they are recognized by CCS or they have been confirmed by a legally binding court judgement.

Article 6 Termination

1. The present Contract may be terminated by either party also with respect to particular machines or systems, by giving one month's notice to the end of the accounting period, for the first time to the end of the basic term stated in the Maintenance Certificate.
2. CCS is entitled to terminate the present Contract without notice if
 - a) the Customer is in arrears with payment of the maintenance fees,
 - b) the Customer commissions maintenance work to be performed by persons other than CITYCOMP staff or persons commissioned by CITYCOMP,
 - c) bankruptcy or composition proceedings are filed against the Customer's assets.

Article 7 Liability

1. CCS shall be held liable for culpable or grossly negligent violation of its obligations under this Contract, whereas, notwithstanding § 280 Sect. 1 (1) and (2) BGB the burden of proof regarding the breach of duty and default shall lie with the Customer. Any further liability of CCS is excluded.

2. CCS shall not be held liable for uninterrupted fitness for operation, loss of profit, for savings not made, for consequential damages of any kind and for the loss of recorded data.

3. The extent of CCS's liability under this Contract for bodily injury and property damages of any legal cause shall be limited to an amount up to € 2,5 Mio. per single incident and in the aggregate per calendar year.

4. The extent of CCS's liability for any and all other kinds of damages, of any legal cause, including but without limitation to indirect damages and financial loss, shall, per single incident and in the aggregate per calendar year be limited to 8% of the yearly turnover of this Contract, relating to the calendar year before the case of liability occurred, and shall not exceed the amount of € 300.000,--.

5. As far as Customer is responsible for the storage of data, CCS's liability for the loss of data shall be limited to the costs which would have been incurred in case of proper fulfilment of the obligation of data protection. As far as data is stored in CCS's responsibility, § 7 Sect. 1 to Sect. 4 applies, notwithstanding § 4 Sect. 2.

6. CCS's limitation of liability according to § 7 Sect. 1 to Sect. 5 and the indemnification of CCS by Customer according to § 7 Sect. 8 shall not apply if and insofar as a damage is wilfully caused by CCS.

7. CCS has concluded a company liability insurance covering bodily injury and property damages up to an amount of € 2,5 Mio. for a single incidence and in the aggregate per year. CCS guarantees to maintain this insurance for the duration of this Contract.

8. If third parties claim damages from CCS, Customer shall indemnify CCS from such claims insofar as CCS is not liable for such damages on the basis of § 7 Sect. 1 to § 7 Sect. 5 and § 7 Sect. 8 of this Contract accordingly.

9. Customer acknowledges, that the limitation of CCS's liability and the indemnification of CCS from damages by Customer requires the consent of its product liability insurer; Customer declares to have obtained this consent.

10. CCS accepts no liability for the proper and orderly performance of work by the manufacturer or the persons commissioned by it.

Article 8 Miscellaneous

1. Amendments and supplements to the present Contract must be in writing in order to be enforceable. This also applies to the waiver of the written form requirement.

2. The Customer will authorize CCS on demand to commission the respective manufacturer to perform maintenance services.

Article 9 Concluding provisions

1. The Contract shall be governed by German Law.

2. The exclusive place of jurisdiction shall be the registered office of CCS, if the Customer is a businessman (Kaufmann).

3. Should any provision of the present Contract be or become wholly or partly void, the other provisions shall remain valid.

The contracting parties shall implement a permissible provision which comes closest to the documented intentions of the parties. This applies also in case of an unconsidered regulatory gap.

The Customer

CITYCOMP Service GmbH

Place,

date

Ostfildern, dated _____

Company stamp

Signature(s)

Company stamp

Signature(s)