

Special Terms and Conditions for Remote Access Services and Advance Telephone Advice I Support (RAS)

(For remote diagnostics and troubleshooting for machine and system controls)

(As of 01/2017)



1. Legal basis, framework contract, conditions

- (1) The legal relations with regard to the provision of services for the troubleshooting and correction of faults in machines and plant of the customer by means of remote access via telemedia by us, shall be exclusively based on and in accordance with these Special Terms and Conditions and any other agreements made with the customer in the framework agreement or individual order.
- (2) General terms and conditions of business of the customer raised in objection against our conditions shall not apply even if we do not contradict them in individual cases. The customer's general terms and conditions of business shall not become a part of the contract even through acceptance of an order, unless the parties have explicitly made a different written agreement in detail.
- (3) Before the initial access, the customer shall agree with us the Remote Access Services (hereafter "RAS") specified in a framework agreement on the basis of the following conditions. Due to the RAS performance to be provided as required, the customer shall receive support from qualified personnel. As far as possible, this shall be done by means of communication via telemedia (online via Internet, telephone and data transmission). For this purpose, the customer shall make available at his end trained personnel to participate in, enable and comprehend the RAS services.

2. Responsibility, choice of service type, order assignment

- (1) The responsibility and the decision-making authority for the operation of the machine or plant shall remain with the customer even in the case of the provision of consulting services or RAS services by MARBACH. RAS services also do not replace the regular maintenance and safety testing of the machine or plant.
- (2) In each individual order, the customer shall determine whether he can or wishes to establish the cause of the fault and correct the fault himself by means of telephone advice. The customer shall then select telephone consulting from MARBACH without access to the plant.
- (3) If our consultant is able to help in troubleshooting or in establishing the cause of the fault, but the customer eliminates the fault himself, a passive remote access (seeing and pointing) shall be necessary.
- (4) If the customer requests the entire service (fault detection or determination of the cause of the fault and elimination of the fault, insofar as it is possible through remote access), active full access (with or without a contrary confirmation of the respective action by the customer) to the controls with administrator rights shall be necessary.
- (5) The direct control of the machine or plant or safety-relevant parts or devices (accessories) shall not be permitted in active remote access. The active remote service therefore shall require a trained and experienced employee of the customer at the machine or plant.
- (6) If the customer desires a step-by-step approach, our consultant shall initially deal with the error message and possible problem causes by telephone, and shall support the customer's personnel finding a solution to the problem through advice by telephone. If this is not a promising possibility or if all possible sources of error that can be identified without reading access are unsuccessful, our consultant shall offer the RAS service. If our consultant recognizes that an active remote access is required to determine the problem or to correct the problem or if it makes sense for reasons of cost, he shall request the customer's personnel to allow active access ("writing authorization") to change the data, processes and / or settings.
- (7) The customer shall provide MARBACH with the individual order for the desired type of service (s) in writing or, if a framework contract exists, by telephone call.

3. Performance, technical, economic and legal performance limits

- (1) The RAS is used for the timely and cost-saving identification of incidents that have occurred and for the ascertainment of the current state of the machine or plant by telecommunicative means on the basis of the recorded data and the information communicated by the customer. MARBACH shall analyze the recorded data and processes for deviations of the actual from the desired or required setpoint state.
- (2) The range of functions depends on the status of the machine or system software and of the technical progress. The customer shall be aware that the scope of this function will change over time. Therefore, the scope of services currently offered by MARBACH within the framework of RAS, which is possible on the basis of the technical equipment of the plant, shall be agreed on.
- (3) Within the scope of the technical and personnel possibilities, a performance success shall also be aimed at machines or plant of which the operating system or controls no longer correspond to state-of-the-art technology. MARBACH shall assume the obligations detailed in the order. A guarantee that the use of advisory services or RAS services will diagnose and correct all existing damage and defects of the machine or plant as well as guarantee the operability of the machine or plant shall not be given, even if the reported problem is apparently solved after the implementation of the advice or the RAS services. If the machine or plant cannot be repaired or not completely repaired by means of remote diagnostics, MARBACH shall notify the customer thereof and, if possible, offer commercially reasonable measures for repair or substitution.
- (4) Spare parts deliveries or repair work shall be provided at the customer's request on the basis of our General Terms of Delivery and Payment and our assembly and repair conditions.
- (5) MARBACH shall provide all necessary services free of charge in the case of a defect liability arising from any other contractual relationship existing between the parties. Confirmation shall be made after the defect has been identified as a cause of the problem.
- (6) If problem causes ascertained during the warranty period of the machine or plant, are directly attributable to undue use of force, improper operation or other incorrect usage, the use of incorrect or contaminated materials and media (electricity, water, compressed air), failure to comply with the installation and ambient conditions specified by the manufacturer, inadequate or incorrect maintenance, force majeure or pollution which are neither attributable to MARBACH nor have their cause attributable to us in the functioning of the plant, MARBACH shall be obliged to provide RAS services for replacement parts and repair services only against payment. If payment has not been agreed upon when the cause of the problem has been identified - if this seems economically reasonable - before the execution of the work. The minimum limit for the purposes of this Regulation shall be laid down in the case of a framework contract. Without a framework agreement, the statutory provisions for the contractor (§§ 665, 670 BGB) apply until the payment agreement.
- (7) MARBACH shall reserve the right prior to consultation and RAS services, which are not to be provided free of charge pursuant to paragraphs (5) and (6), to make these dependent upon prior settlement of due invoices of the customer.

4. Documentation

- (1) MARBACH shall record the conditions of the machine or plant determined by the remote diagnosis, including the deviations determined and any measures taken to solve the problem. The type and scope of the logging is - unless otherwise agreed - at our sole discretion. After measures are

successfully completed, the customer shall receive a short report. If, in our opinion, further measures are necessary after completion of the RAS services, the customer shall receive a report together with our recommendations on further procedures.

- (2) Since the necessity of detailed documentation can only be made out during the course of the RAS services, we shall be entitled to record and store for evidentiary purposes the entire communication during the consultation and implementation of the RAS services. Our employees shall point out the implementation of these measures when setting up the connection
- (3) The documentation serves both as information and as evidence for the customer, as well as for the proof of the services rendered by MARBACH and for the discharge of both parties. The customer shall have the right to obtain a copy of the records against reimbursement of expenses and costs.
- (4) Unless otherwise agreed, the cancellation period shall be determined by MARBACH. In particular, there shall be no storage obligation. Our employees shall be entitled to delete the documentation of successful or otherwise unproblematically completed consultations as soon as the process has been completed. In addition, the data shall be permanently archived and only then deleted if there is no longer a legitimate interest in their retention.

5. Technical requirements for RAS services

5.1 Transmission path, remote access software

- (1) Insofar as a customer-specific connection has not been established and agreed in the individual case, RAS shall be carried out by means of an Internet connection via TeamViewer sessions (Internettunnel for TeamViewer).
- (2) If the machine or system control is supplied by MARBACH, an up-to-date TeamViewer client shall be included at the time of delivery. Otherwise, the customer shall be required at his own expense and risk to provide the prerequisite access by means of a TeamViewer session by MARBACH before the first assignment. The conclusion of the end-user license agreement and the permanent updating of the software and the protection of the system against unauthorized access by third parties shall be the responsibility of the customer at his own expense. In the case of machines or plant of which operating system or system control no longer correspond to state-of-the-art technology, in particular when no longer supplied with safety-relevant updates, there may be an increased risk for the customer. In order not to jeopardize the functionality of the system by means of updates, we recommend prior coordination with MARBACH.
- (3) The Customer shall establish and maintain the necessary telecommunications equipment at his own expense and risk. In the event of a breakdown of the data transmission path between the customer and MARBACH, in particular due to disturbances in the transmission paths, as well as in the case of missing or insufficient data, MARBACH shall be exempted from its performance obligations.

5.2 Machine or system control, virus protection

- (1) The customer shall ensure that the machine or plant and the machine or plant software are in a technically flawless maintained state and that no changes have been made to the installed system software without the approval of MARBACH.
- (2) All changes made, damages and significant deviations from the desired condition shall be communicated to our consultant at the latest before approval of access. MARBACH shall assume no liability for defects or damage resulting from the violation of the customer's obligation to cooperate.
- (3) Both parties shall take reasonable measures with the best available technology to prevent the entry of viruses into either parties' software. Should viruses occur in one of the parties which could impair the RAS performance or be transferred to systems of the other party, the other party shall be informed immediately in text form.

6. Access rights, confidentiality and data security

- (1) The customer shall guarantee that user identifications and passwords assigned to MARBACH shall only be disclosed to authorized persons. At the request of the customer a telephone password can be set for the authorization of our consultants.
- (2) The maximum extent of access rights of MARBACH is determined by the customer himself and on his own responsibility. It ensures that our consultants can only access the machine or plant software or controls, and in particular cannot access third-party personal data (§ 9 BDSG order and access control).
- (3) The access rights for access by means of a TeamViewer session shall be assigned by the customer according to the desired type (s) of service (see section 2).
- (4) The data provided by the customer for access shall be transmitted by TeamViewer and imported into the remote diagnostic system of MARBACH. In the same way, measures from MARBACH shall be returned to the customer. The end-user licence agreement provides further details. Manuals, certificates, safety instructions and more, shall be available for download by the service provider on the website <https://www.teamviewer.com/en/support/documents/>.
- (5) In addition, MARBACH has the right to transmit the logbook data that is used for diagnosis via online access.
- (6) MARBACH shall use the customer data exchanged and other information provided by RAS within the framework of the RAS services exclusively for the services specified in the respective framework contract (see § 28 BDSG). If a framework contract does not exist, the findings obtained from the data shall be used exclusively in the interests of the customer (for example, in the case of subsequent orders). Marketing of these findings on their own account or transfer of knowledge to third parties shall not be permitted. However, MARBACH shall be entitled to use general MARBACH product-related findings for the improvement of its own products and services and for security.
- (7) For log data, the special provision in Section 4 applies.

7. Assistance responsibilities of the customer

- (1) In case of need, the customer shall activate RAS services by means of a telephone call. MARBACH shall then take up connection with the customer's plant.
- (2) When reporting, limiting, determining and describing errors, the customer must follow MARBACH's issued guidelines and instructions. If necessary, the customer must use setup procedures / checklists from MARBACH.
- (3) The customer's cooperation shall be necessary to solve the problem. For this purpose, professionally trained personnel must be provided. In the case of uncertainties, additional information and documents shall be submitted to MARBACH.

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(4) In cases where RAS services may result in a risk to persons and property, the customer must, for reasons of supervisory obligation, issue a confirmation that the intended measures can be carried out safely (approval). The approval of the measure, as well as the direct handling, control and operation of the machine or plant or safety-relevant parts or devices (accessories) shall be carried out by a trained and experienced employee of the customer. If not every machine or plant can be acknowledged locally, the customer must carry out reliable protection measures against personal injury and material damage. In case of doubt, the customer must consult a specialist for work safety. In particular, the customer must ensure that no persons are jeopardized in connection with the performance of the service on site.

(5) The customer shall be obligated to regularly and adequately train his technical personnel in the technical service facilities and instructions necessary for RAS services (control terminal, control devices, emergency stop switches, service flaps, control masks, etc.) and operating instructions, setting instructions, mechanical basic settings, safety instructions Schools.

(6) It shall be the responsibility of the customer to maintain and repair the machine, plant, safety-relevant parts or devices (accessories) according to the manufacturer's requirements and with state-of-the-art technology.

(7) MARBACH must be notified immediately and in writing about any changes and user-defined settings which the customer makes on the machine or plant, insofar as these may have an effect on the agreed RAS services or advisory services.

(8) The customer shall be obligated to produce safety data for all data on a regular basis before every use of RAS. If malfunction has occurred, the execution of data backup can have a counterproductive effect. If there is no current backup file, the customer must point this out to our consultant. If in doubt, the adviser is recommended to point out the existing uncertainty before making the connection.

(9) For all duties and obligations, the customer shall bear the responsibility and any costs incurred by him, as well as, where applicable, additional costs resulting from non- or inadequate fulfillment incurred by MARBACH.

8. Payment

(1) The basis for the calculation of payment and the price adjustment intervals shall be agreed in the framework contract. If there is no framework contract and no compensation agreement in the individual contract, the consulting time period and the time period of the RAS services shall be recorded and settled according to the general MARBACH hourly rate applicable for RAS services at the time of the service execution.

(2) The chargeable service time periods include not only the duration of telephone calls, active or passive remote access according to section 2 paragraphs (2) to (4), but also all the time required for problem solving, in particular for

- familiarization with changes and user-defined settings made by the customer on the machine or plant or its surroundings
- studying and processing additional information and documents according to section 7 (3)
- researching, studying and processing necessary guidelines for problem solutions, technical literature, expert opinions, etc.
- necessary preliminary and post-processing work for the RAS services and their success monitoring.
- Documentation

insofar as the contract is not otherwise agreed and the auxiliary time does not exceed a total of two hours. The statutory regulations for the contractor (§§ 665, 670 BGB) shall apply to an individual payment agreement for more than one-off auxiliary times.

9. Performance time

MARBACH provides employees for telephone consultation and RAS services, and are available to the customer within the contractually agreed periods. In addition, the availability depends on how many customers use telephone consulting or RAS services at the same time. Immediate availability shall not therefore be guaranteed.

10. Force majeure, performance impediments not attributable to MARBACH

(1) If the provision of services is delayed - even within a possible default - in cases of force majeure (including, but not limited to, epidemics, war, civil war or warlike or civil war related conditions, or the imminent occurrence of such circumstances), or by means of action within the framework of labor disputes, in particular strikes and lockouts, as well as the occurrence of circumstances beyond MARBACH's control, the services may be provided within a reasonable period after the end of the relevant events, provided that such events have impacted the due date. We shall notify the customer as soon as possible of the occurrence and the foreseeable duration of such events.

(2) The performance time shall also be delayed appropriately if the customer is in arrears with his payments or other cooperation obligations and behind in his obligations from the order.

11. Delay, limitation of liability

(1) If, as an unavoidable consequence of a delay by MARBACH, customer damage is incurred, which could have been avoided in the event of a timely start of performance, the customer shall be entitled to demand damages due to delay in performance, but up to a maximum of 5% in compensation for the delayed part of the services. The limitation of liability does not apply if an intentional or grossly negligent breach of duty by organs or vicarious agents of MARBACH caused the delay in performance.

(2) Additional claims due to delay in performance shall be excluded.

12. Deficiency claims

(1) MARBACH provides services according to the generally accepted rules of technology. If the performance is not carried out completely or improperly, MARBACH shall make this good free of charge as part of the liability for defects.

(2) If MARBACH does not fulfil its obligation to provide supplementary performance, the customer is entitled to set a reasonable time extension. If MARBACH fails to meet this deadline, the customer may, after consultation with MARBACH, reduce the agreed payment or effect an extraordinary termination of the order concerned.

(3) The liability for defects is finalized in section 13. Further claims for defects and the rights of the customer with regard to defects are excluded.

13. Liability

(1) MARBACH shall be liable, on the basis of the following provisions, for all damages to machines, plant or their accessories, which are the object of the RAS services, and which our consultants have culpably caused as vicarious agents.

(2) Liability is excluded, as far as the damage was caused by

- faulty data lines,
 - Data corruption,
 - Loss of data,
 - Transmission errors
 - Non-state-of-the-art remote programs (TeamViewer, etc.)
 - Access by third parties
 - missing or faulty operating systems, programs or data protection devices (permanent updates, virus protection, firewall, permanent data protection), which are not kept up-to-date,
 - missing or incorrectly configured data protection features (password protection, access rights restrictions, encryption)
 - Continued use of obsolete software, no longer supported by the manufacturers' security updates
 - misconduct of the customer and his vicarious agents, in particular if the misconduct is due in particular to an infringement of obligations of this contractual relationship,
 - Infringement of the co-operation obligations of section 7
- unless the action or willful omission of the customer, his vicarious agents or third parties leading to the damage, has been caused by wrongful intent or gross negligence of senior employees or wrongful intent initiated by vicarious agents of MARBACH.

(3) Mandatory regulations of product liability remain unaffected.

(4) In accordance with statutory provisions, we are liable for any breach of warranty, personal injury or insofar as caused by us, our legal representatives, senior staff, or vicarious agents, wrongful intent or gross negligence.

(5) Insofar as we negligently violate an essential contractual obligation, the non-compliance of which is a threat to the object of the contract, our liability to compensate for damage to property is limited to the replacement of the foreseeable and typically occurring damage.

(6) Purely financial damage, in particular business interruption and damages resulting from standstill shall not be indemnified.

(7) Any further claims are excluded.

(8) Insofar as our liability is excluded or limited, this shall also apply to the personal liability of our personnel, employees, temporary workers, representatives and other vicarious agents.

14. Statute of limitation

(1) The rights and claims of the customer arising from the order due to deficiencies in the subject matter of the contract or the performance of the contract shall be subject to a limitation period of 12 months, starting with the termination of the respective service. If acceptance has been agreed, the limitation period begins at the date of acceptance, the occurrence of the said circumstances (in the event of acceptance waiver, acceptance by conclusive behavior of the customer or after the expiry of the time limit pursuant to § 640 sentence 3 BGB) or with occurrence of delay in acceptance.

(2) Expiry of the limitation period shall neither be interrupted nor suspended by notification of defects, subsequent correspondence, measures for error checking and determination as well as subsequent fulfillment proceedings. These effects are to be expressly agreed in the individual case.

(3) In cases of unrestricted legal liability, the statutory provisions shall also apply to the limitation period.

15. Termination

(1) Unless otherwise agreed, the individual order shall be concluded for the required time.

(2) A framework contract or a long-term contract may be canceled in writing by either party, subject to a period of 3 months notice before the end of the calendar year, unless another notice period has been agreed.

(3) In addition, an extraordinary timely termination of a party is possible if the other party violates essential contractual obligations. MARBACH shall also have the right to terminate the contract without notice, upon the commencement of customer insolvency or the initiation of insolvency proceedings against the client's assets.

16. Data protection

We would like to point out that data on transactions are processed within our company and we reserve the right to transfer the data required to obtain a credit guarantee to the insurer. Please also note our privacy policy for internet presence and electronic mail.

17. Governing law for international legal transactions

The law of the Federal Republic of Germany, to the exclusion of the United Nations Convention on the International Sale of Goods, shall apply to these terms and conditions and all legal relations between us and the customer.

18. Applicable contract language, interpretation rules

(1) Unless otherwise agreed, the contract language shall be German. If, in addition to the order confirmation in German, there is a version in the language of the customer or other foreign language, the German version alone shall apply. If an order confirmation only exists in a foreign language, the wording translated into the German language is decisive for interpretation.

(2) If there is disagreement between the contracting parties on the wording of a translation pursuant to paragraph (1), a publicly appointed translator, at the expense of both parties, shall be responsible for the interpretation of the contract.

(3) If the parties to the contract cannot agree on a translator in accordance with paragraph (2), the person shall be appointed by the President of the Heilbronn District Court or by the Director of the Chamber of Industry and Commerce in Heilbronn. Both contracting parties have the right to apply for the provision.

(4) If the question of the interpretation of the contract or of the current version cannot be resolved by mutual agreement, the competent court shall determine the basis for interpretation independently.

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19. Place of fulfillment, court of jurisdiction

- (1) If the customer is a merchant within the meaning of German commercial law Handelsgesetzbuch (HGB), a legal person of public law or a special fund under public law, the place of fulfillment for us is the responsible service D 74080 Heilbronn.
- (2) If the customer is a merchant within the meaning of German commercial law Handelsgesetzbuch (HGB), a legal person of public law or a public law fund or does not have a registered office in the Federal Republic of Germany, Heilbronn / Neckar is the exclusive court for all disputes arising directly or indirectly from the contractual relationship. In all cases, we are entitled, at our discretion, also to take legal action at the customer's place of business.