

# Special Terms of Contract for Software License, Software Maintenance, Support and Cloud Services (SSC) for Industrie 4.0 Products and Services [connect I M]

[Status 06/2021] - valid from 01.06.2021



## 1 Scope of application

- (1) The terms and conditions of the following sections shall apply as a supplement and more specific special provision to the General Terms and Conditions of MARBACH for
  - the sale of software licenses
  - their installation and maintenance,
  - for services for user assistance (support), as well as
  - cloud-based data services via Microsoft Azure.
- (2) Our Special Terms and Conditions for Remote Access Services (RAS) shall apply exclusively to remote diagnosis and troubleshooting in machine and plant control systems (Remote Access Services). These shall also be the basis for the user support services regulated in Section 3 and - if a RAS has been set up and the services cannot be provided by announced access via VPN tunnel to the system in accordance with Section 3 Clause 19 Paragraph (3) - the basis for the handling of the warranty for adaptation or installation services free of charge for the Customer.
- (3) If the services described in Sections 1 to 4 form an essential part of the contract, the GTC MARBACH shall apply.  
Section 3 Duties to protect: Drawings, documents, models, samples  
Section 12 Industrial Property Rights of Third Parties, Confidentiality shall not apply. These shall be replaced by the following special provisions.

## Section 1: Special Terms and Conditions of Purchase for the Software License

## 2 Scope of Application, Third-Party Conditions

- (1) The following terms and conditions of Section 1 shall apply to the provision of standard software and - if and to the extent agreed - the provision of services such as the customization of software for the purposes of the customer by MARBACH. Customization of software within the meaning of this contract shall exclusively be understood to mean the customization of standard software, but not the individual software creation. In the following, the term "software" includes both the standard software and the customized standard software.
- (2) The services for supporting the customer in the installation, maintenance and care of standard software (hereinafter referred to as "software maintenance") by MARBACH are governed by Section 2. Software maintenance is understood to be the permanent updating of the software until the announced discontinuation by MARBACH or the third-party provider of the co-sold software. Software maintenance is understood to be the permanent installation of the updates and the adaptation required for the customer system.
- (3) The services for user support in the Customer's system environment on the basis of the Special Terms and Conditions for the Remote Access Service are governed by Section 3.
- (4) The Microsoft Azure-based cloud services are governed by Section 4.
- (5) The scope of application of the terms and conditions of sections 1 to 4 for the respective service shall also be opened if one or more services are "sold" to the Customer "in a package" ("bundle") or services that are settled with the "purchase price", the license fee or agreed service flat rate. The provisions shall apply accordingly to MARBACH services to third party software (operating system, communication, analysis and security software, etc.).
- (6) If MARBACH procures hardware or software from third-party providers for the customer, their terms of use and licensing conditions apply to these products in the relationship with the third-party provider, which the customer must accept in the procurement process. If agreed MARBACH services are no longer legally or economically feasible due to these third-party terms and conditions, the customer shall be obliged to cooperate in updating its system and/or its system environment. For the duration of the software maintenance agreement, MARBACH shall take over the procurement, commissioning and adaptation of a suitable successor product and its care and maintenance for the substitution of the originally procured product. MARBACH is also bound by the third-party provider terms and conditions and provides the services to third-party products for the customer on the basis of the legal regulations for the contractor (§§ 665, 670 BGB/German Civil Code). The mediation of the third-party specifications to the customer is part of the MARBACH service for the duration of the software maintenance contract. For instructions and information of the third party provider, the electronic form of making available the documents and data required for this is agreed. If the customer requires further information, it shall request this from MARBACH or from the third-party provider.

## 3 Software transfer and license fee

- (1) The transfer shall be effected by handover or electronic transmission of the software. If MARBACH has also been commissioned with the installation in accordance with Section 2, the transfer shall be effected by commissioning by the customer. MARBACH shall deliver the software to the Customer in object code and, within the scope of software maintenance, in a format ready for installation by the Customer. MARBACH shall not hand over any source code to the customer.
- (2) The customer shall pay MARBACH the agreed license fees for the provision of the software.
- (3) Customization services shall be charged on the basis of the actual time spent by MARBACH in accordance with MARBACH's current price list, unless otherwise agreed. MARBACH reserves the right to copy and use the adaptations of the software made for the customer for general software maintenance, general further development of the program code and for optimizing the support of other customers.
- (4) The amount of the license fees depends on the number of controlled tools and the number of accessing users (multi-user or network licenses).
- (5) The license payment shall compensate for the permanent use on the basis of the conditions of the following clause 4.

## 4 Terms of use

- (1) The Customer may reproduce the Software to the extent that the respective reproduction is necessary for its intended use. Necessary duplications include installation on the hardware used as well as loading into the main memory for the purpose of executing the software. Unless otherwise agreed in the individual case, the Customer may make and keep a single backup copy, which shall be marked as a backup copy of the Software provided.
- (2) The Customer shall be entitled to use the Software within a network or other multi-station computer system so that it can be operated simultaneously or consecutively from more than one workstation, so-called multi-station or network application. The type and number of users (clients) authorized to access the software or another type of license metric (e.g. number of servers) depend on the type and scope of the software to be used in accordance with the respective description of functions and services and the scope noted by MARBACH in the order confirmation. If the number of users authorized to access the software is contractually limited in relation to the total number of users connected to the computer system, the Customer shall ensure

the limitation by technical and organizational measures and provide MARBACH with suitable evidence thereof.

- (3) Any use of the software beyond the agreed scope (overuse), in particular use of the software with more than the agreed number of users with access rights, is an act in breach of contract. The customer must immediately notify MARBACH in writing of the overuse. If a review according to paragraph (4) or in any other way shows that the use of the contractual software by the customer exceeds the contractual agreements, the customer has the right to conclude a contract with MARBACH on the increase of the scope of use.
- (4) MARBACH is entitled to review the use of the contractual software and its scope, as a rule once a year. In doing so, MARBACH may, among other things, review the number of users to whom MARBACH grants the possibility of accessing the software via interfaces.
- (5) The customer is not entitled to decompile the software except in the cases of § 69 e UrhG /German Copyright Act). Excepted from this are additions and changes to interfaces of the Software, insofar as these are intended for addition and/or change by the Customer (so-called scripting). Scripting in the aforementioned form is permitted at the customer's own risk.
- (6) The Customer shall not be granted any rights to the Software other than those specified in paragraphs (1) to (5).
- (7) The customer is not entitled to remove copyright notices and other copyright information located on data carriers, in the program or in the documentation.
- (8) In all cases of termination of his authorization to use the Software (e.g. by withdrawal from the contract), the Customer shall cease using the Software and shall immediately return the Software provided to him as well as any other contractual clauses provided with the Software and shall delete all copies unless he is legally obligated to retain them for a longer period of time. It shall then assure MARBACH in writing that he has fulfilled this obligation.
- (9) The assignment or transfer of rights and/or obligations from the software purchase contract by the Customer requires the prior written consent of MARBACH.

## 5 Special duty of cooperation

in accordance with clause 6 (3) of the MARBACH General Terms and Conditions of Business.

- (1) The customer must provide or create a suitable system environment for the start of use in accordance with the respective functional and performance description of the software and the scope of use noted by MARBACH in the order confirmation.
- (2) In the sense of an obligation, the customer itself is obliged to obtain all necessary rights to hardware and software used by it from third parties from these third parties itself. This shall also apply in cases where the software enables indirect use of third party software (interfaces or other connections). Clause 6 paragraph (6) of the General Terms and Conditions shall apply accordingly if MARBACH has assumed the procurement of the hardware or software from third parties on behalf of the customer.
- (3) The obligation to provide the software is fulfilled with the handover or electronic transmission of the software (cf. section 2 clause 2). The legal consequences of Section 6 of the General Terms and Conditions of Business relate exclusively to the services (customization, installation, support, etc.) that may have been commissioned. The Software Maintenance Agreement pursuant to Section 2 shall commence upon the transfer of the Software pursuant to Section 2 Clause 2.
- (4) Third-party hardware and software supplied by MARBACH (e.g. SmartBox including software for operation, communication and security) fulfills the aforementioned prerequisites for the duration of the concluded software maintenance contract pursuant to Section 2, as long as the Customer fulfills its contractual obligations for substitution pursuant to Section 2 Paragraph (6).

## 6 Claims for defects

Supplementary to clauses 13 and 14 of the MARBACH General Terms and Conditions of Business

- (1) MARBACH guarantees that the software is free of third party rights and indemnifies the customer against third party claims including the costs of legal defense according to RVG(German Lawyers' Fees Act). The indemnification requires
  - (a) that the customer immediately notifies MARBACH in writing of any claim,
  - (b) the customer does not undertake any legally relevant actions towards the third party, in particular does not settle out of court without written consent of MARBACH, does not make an acknowledgement or undertakes actions which are equivalent to such,
  - (c) the customer supports MARBACH in a legal defense against the third party to the necessary extent, in particular by providing information, and
  - (d) the customer allows MARBACH to determine and implement the strategy of the legal defense, in particular by selecting lawyers and drafting pleadings. For this purpose, the customer will make the necessary declarations and grant powers of attorney. MARBACH will give due consideration to the justified interests of the customer in the legal defense.
- (2) In the event of conflicting rights of third parties, MARBACH will make reasonable efforts at its own expense to ensure that the customer can continue to use the affected software. For this purpose MARBACH may
  - (a) procure for the customer the rights required for further use or
  - (b) modify the respective software in such a way that the rights of third parties are no longer affected without restricting its usability and without changing MARBACH's performance obligations.
- (3) If MARBACH is not able to remedy the situation in accordance with section 6.2 of the General Terms and Conditions, MARBACH may terminate the contract. Further rights of the customer remain unaffected by this.
- (4) Material defects in the software including the associated documentation must be notified immediately (cf. Section 13 of the General Terms and Conditions of MARBACH). Cure shall take place at MARBACH's discretion in the form of removal of defects (patches, updates or upgrades) or new creation (releases). However, a right to withdraw from the software transfer contract or to terminate the software maintenance contract in accordance with Section 2 shall only exist in the event of significant defects that permanently restrict the function of the software and if MARBACH has not demonstrated any possibility of circumventing the problem

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- caused by the defect symptoms (workaround) for the duration until the defect has been finally remedied.
- (5) For the duration of the software maintenance contract in accordance with Section 2, defects in the software itself shall be remedied within the scope of the software maintenance. This does not apply to defects in any customization services provided by MARBACH. If technically possible, these will be eliminated on the Customer's system via the remote access service or by MARBACH and its vicarious agents.
  - (6) Claims for defects are also excluded in accordance with clause 14 paragraph (6) of the MARBACH General Terms and Conditions if
    - scripting by the customer leads to a deviation of the actual from the target functionality of the software or to any other defect or damage
    - no system environment suitable for the respective functional and performance description of the software and the scope of use noted by MARBACH in the order confirmation is provided or created
    - the software is not kept up to date with the latest software maintenance by MARBACH
    - the substitution recommendations for third-party products (clause 1 paragraph (6)) are not complied with
    - the software continues to be used beyond the end date of the software maintenance according to clause 9.
  - (7) The warranty period in accordance with clause 14 Paragraph (19) of the General Terms and Conditions of MARBACH shall commence with the transfer of the Software or the transfer of the results of cure.

## 7 Liability

Supplementary to Clause 15 General Terms and Conditions MARBACH

- (1) MARBACH shall only be liable for the recovery of data, even in the event of culpable breach of duty, insofar as the customer has taken all necessary and reasonable data security precautions in accordance with the respective state of the art and has ensured that the data can be reconstructed with reasonable effort from data material which is kept available in machine-readable form. MARBACH's liability is limited to the effort required for data restoration.
- (2) In cases of clause 15 paragraph (4) of the General Terms and Conditions, the damage is limited to 5% of the agreed license fees.

## 8 Changes to the subject matter of the contract (change requests)

- (1) Both contracting parties are entitled to request a change in the scope of services (Change Request).
- (2) If the Customer requests a Change Request, the Change Request should contain the following details:
  - the description of the program feature, or the system environment to be changed (status quo)
  - the description of the program feature, or the system environment to be created (target)
  - the reason for the change (motivation)
  - the program version concerned, stating the contract number of the MARBACH software maintenance contract
  - the date of the desired implementation
  - the name of the creator of the change request for possible queries from MARBACH.
- (3) MARBACH will review the customer's change request with regard to the impact on the agreed scope of services and report a rough cost estimate of the requested change (if applicable, separated into internal and external costs, license costs, personnel costs, etc.) and the estimated time required for the requested change (if applicable, separated into design, development, testing, etc.).
- (4) If the customer is interested, MARBACH shall be entitled, but not obliged, to submit an offer in response to the customer's change request after submission of the estimate.
- (5) If MARBACH wishes to propose a Change Request to the customer, MARBACH shall submit a corresponding offer to the customer.
- (6) A Change Request shall only become subject matter of the contract if the customer expressly commissions MARBACH's offer in writing. With the commissioning, the terms and conditions agreed between the contractual partners shall change in accordance with the information in the offer for the Change Request.

## 9 Termination of Software Maintenance (End of Life / EOL Termination)

- (1) MARBACH's software is subject to constant technical external requirements and internal advances. In individual cases, this may lead to such a change in the software that the software is completely replaced functionally by a new product or a new solution ("successor product"). In this case the successor product replaces the software. Customer shall have no right to be provided with the Successor Product. For the avoidance of doubt, it is stated that a successor product is not involved if the innovation is merely a new release (> release change cf. Section 2 Clause 13 Paragraph (1)) of the purchased program.
- (2) Unless otherwise agreed, the MARBACH program has a remaining term for software maintenance in accordance with Section 2 of at least five (5) years at the time of purchase. If this guarantee period is undercut by the EOL termination, the customer shall be entitled to the free transfer of the successor product including any adjustment pursuant to Section 3 paragraph (3). If the end of the product has already been announced at the time of purchase, sentence 2 shall not apply. In this case, the contractual partners shall agree on the conditions of the product change. The guarantee is not transferable and only applies to newly delivered software from MARBACH to the customer.
- (3) MARBACH will inform the customer about planned changes to the software product portfolio as required. If a software product/module is replaced by a successor product or is no longer further developed and is therefore discontinued, MARBACH must announce this measure (end of life) in writing with a notice period of at least six (6) months to the end of a calendar year.
- (4) The written announcement pursuant to paragraph (2) shall at the same time be deemed to be an ordinary termination of the Software Maintenance for the corresponding Software at the next possible point in time. With the written notice, MARBACH shall inform the Customer about possibilities for updates or a migration to a current successor product.
- (5) The basically unlimited further use of the purchased software beyond the end date is at the customer's own risk.

## 10 Export determination

MARBACH software may be subject to export control laws, standards, regulations, restrictions and national security controls of the Federal Republic of Germany, the European Union and/or the United States of America. The customer is obligated to observe any possible restrictions resulting therefrom and, if required for its registered office or location, to obtain the necessary approvals independently. The Customer shall indemnify and hold harmless MARBACH against all consequences of the violation of this provision.

## 11 Confidentiality and data protection

- (1) The contracting parties undertake to treat information received about the other contracting party in the course of the initiation and performance of the contract as strictly confidential. The term information is to be understood in a broad sense and includes in particular any documents of an electronic nature and in print form, including the terms and conditions of the contract, as well as information disclosed during an oral presentation or discussion. Excluded from the confidentiality obligation is such information that is publicly known or that the customer or MARBACH has demonstrably received from third parties without violating a confidentiality obligation. The use of the confidential information received shall only occur to the extent that it is necessary for the fulfillment of the purpose of the contract. Use for other purposes is not permitted unless the respective other party declares its consent in writing in advance.
- (2) Any confidential information received shall be returned by the contracting parties after termination of their services and all remaining copies shall be deleted, unless the respective party is required by law to retain a copy of the information. In this case, the destruction shall take place immediately after expiration of the statutory retention period.
- (3) The parties shall observe the applicable provisions of data protection. Insofar as the services of MARBACH constitute commissioned data processing pursuant to Art. 28 DSGVO (General Data Protection Regulation) or the obligation to conclude an agreement pursuant to Art. 28 (3) DSGVO exists, the Parties shall conclude an agreement on commissioned data processing at the same time as the order confirmation in accordance with the contract text available at <https://www.marbach.com/>

## Section 2: Special contractual conditions for the installation and maintenance of the software

### 12 Software Maintenance Agreement, Service Level Agreements, Term of Agreement, Termination

- (1) If a framework agreement for software maintenance, servicing and user support has been concluded (service level agreement), its terms and conditions shall take precedence over the provisions of Sections 2 and 3 of these Special Terms and Conditions. The software care and maintenance contract pursuant to Section 2 may also be agreed or extended without a service level agreement.
- (2) The purchase of MARBACH software pursuant to Section 1 includes free software maintenance in the form of patches, updates, upgrades and, if applicable, release changes for the duration of the warranty period for the customer. The first term of the contract according to paragraph (2) is compensated with the fees stated in the order confirmation.
- (3) The term of the software maintenance contract begins with the transfer of the software from MARBACH to the customer. The software maintenance contract ends on December 31 of the calendar year following the year of conclusion (example: if the contract begins on January 15, 2019, it ends on December 31, 2020).
- (4) It shall be extended in each case by one (1) further calendar year if it is not terminated by one party with a notice period of three (3) months before the expiry of the respective term.
- (5) It shall be the basis and prerequisite for the use of support services pursuant to Section 3, unless otherwise agreed in the individual case.
- (6) The software maintenance contract can also be established for a fee independently of the purchase of the software from MARBACH, but always presupposes licensed use of the MARBACH software. The customer shall provide proof of the license at the request of MARBACH.
- (7) The right to terminate for good cause remains unaffected. An important reason exists for MARBACH in particular if
  - the customer seriously violates his contractual obligations, in particular the customer makes or allows unauthorized changes to be made to the software, persistently violates the terms of use or confidentiality rules or does not comply with a duty to cooperate despite a request, setting of a reasonable deadline and a reminder
  - third-party providers discontinue their maintenance or servicing services and the customer does not comply with proposed recommendations for substitution
  - the customer is subject to insolvency proceedings as defined in Sections 17 to 19 of the German Insolvency Code (InsO)
  - the financial circumstances of the customer deteriorate to such an extent that proper performance of the contract can no longer be expected, even if there is not yet a reason for insolvency within the meaning of Sections 17 to 19 InsO, or
  - the Customer is in default of payment of the remuneration owed for software maintenance or support by more than two months or by an amount corresponding in total to the remuneration for two months.
- (8) Notice of termination must be given in writing by registered letter with return receipt. Terminations that are invalid in form shall be cured by confirmation of the other contracting party (termination agreement).

### 13 Services, service limits

- (1) Even after expiry of the first term - which, in the case of warranty, is included in the scope of the contract in the order confirmation - the software maintenance contract includes continuous software maintenance in the form of patches, updates, upgrades and, if applicable, release changes until the end date (End of Life) in accordance with Section 1 Clause 9 Paragraph (4). The provision of the software maintenance can be carried out by MARBACH or a third party authorized by MARBACH.
- (2) Unless otherwise agreed, the software maintenance contract includes

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- the delivery of firmware updates (permanently installed software of the third party hardware suppliers),
  - operating system updates of the OEM or of third party suppliers specified by the customer,
  - updates of the agreed third-party software for communication, analysis and security (e.g. firewall, etc.).
  - connect I M software updates and upgrades of the software licenses listed in the order confirmation.
  - their maintenance in the sense of installation and adaptation of updates to the respective customer system environment and agreed customer-specific types of use.
- (3) For the maintenance of delivered software from third party suppliers, which are listed separately in the order confirmation, the restriction of the regulation from section 1 number 1 paragraph shall generally apply.
- (4) All software maintenance services can generally be provided by way of remote maintenance via announced encrypted data transfer via VPN tunnel. Unless otherwise agreed in the order confirmation or the framework agreement, the special contractual conditions for remote access services shall apply in accordance with the provisions of Section 3 (special contractual conditions for user support services (support), see below Sections 19 et seq.) shall form the basis. Services provided personally on the customer's premises shall not be included in the lump-sum price (bundle) or in the annual remuneration lump sums pursuant to Section 14 without express agreement. For software maintenance services which must be performed on site at the request or instigation of the customer, Clause 15 and the installation and repair conditions of MARBACH are the basis.
- (5) The contractual software maintenance services do not include in particular the following services:
- Maintenance services outside business hours (cf. section 3 clause 29 paragraph (2) chargeable emergency services)
  - Maintenance services that can only be provided at the place of installation of the Software (cf. paragraph (4) and Section 2 Clause 15 Installation Services).
  - Services which become necessary due to the use of the Software in a hardware and software environment other than that recommended by MARBACH.
  - Services due to scripting: Insofar as the software contains interfaces that enable scripting by the customer and the customer performs scripting or has it performed, services required due to this are not part of the contract.
  - Services due to any other adaptation or modification of the program code of the software by the customer or a third party not authorized by MARBACH.
  - Services with regard to the interoperability of the software with third-party software which is not the subject of the contract.
  - Services to the Software which are caused by improper handling and/or by breaches of obligations by the Customer, e.g. non-compliance with the user documentation (e.g. operating errors).
  - Services for hardware, firmware, operating systems, networks or for other third-party software not co-sold by MARBACH or procured by MARBACH for the customer.
- (6) Additional services, in particular services relating to the software, which become necessary as a result of scripting, unauthorized modification of the software or improper operation, as well as the error or fault analysis preceding this, shall only be provided by MARBACH against separate remuneration. MARBACH is under no obligation to provide these services. All additional services are offered via support via remote access service according to section 3 with the possibility of further order placement according to section 3 paragraph (4) of the special contractual conditions for remote access services (RAS) or as installation or maintenance service on site at the customer's system according to section 15.
- (7) After interruptions of the software maintenance, the update of the MARBACH software is necessary for the restart. The customer decides whether
- the current release status of the software by making up for the interrupted software maintenance in accordance with Section 2 and concluding a new software maintenance contract, or
  - the new purchase of the software according to section 1 and its new installation and the new conclusion of the software maintenance contract is to be carried out

## 14 Remuneration

- (1) The amount of the annual remuneration for the Software Maintenance individually calculated for the Customer for the duration of the term shall result from the agreement in the order confirmation or framework agreement. The specification of the annual remuneration in the order confirmation is based on the scope of the originally agreed rights of use described there in accordance with Section 1 Clause 4 Paragraph (2). Should the Customer acquire further licenses, modules or other software, the remuneration for software maintenance shall be adjusted accordingly. If no price scale for further licenses or other changes is agreed in the contract, the parties shall reach a change agreement. If an agreement cannot be reached, MARBACH is entitled to invoice on the basis of the general price list of MARBACH valid at the time of the changes. The customer is entitled to have the invoiced price checked.
- (2) MARBACH may announce general changes in the remuneration for software maintenance in writing with a notice period of six (6) months

to the end of each year. In this case, the new remuneration shall apply from the first day of the following calendar year, unless the customer terminates the maintenance agreement beforehand in due time in accordance with Clause 12 paragraph (3). MARBACH will point out this possibility to the Customer in the announcement of the change in remuneration.

(3) The invoicing for the software maintenance shall take place annually on 01 January of a calendar year for the period of twelve (12) months in advance.

(4) If the start of the contract is after 01 January, MARBACH shall invoice the remuneration for the calendar year in which the start of the contract falls, in deviation from sentence 1, with the start of the contract on a pro rata basis up to 31 December in advance.

(5) Paragraph (4) shall also apply if adjustments to the remuneration pursuant to Section 14 Paragraph (1) Sentence 3 are agreed with a start date during the year. In these cases, the difference shall be invoiced pro rata in advance by December 31.

## 15 Installation and maintenance service

(1) Installation and maintenance services which have to be performed personally at the customer's premises shall be performed at the customer's request or instigation on the basis of MARBACH's installation and repair conditions.

(2) MARBACH is entitled to use subcontractors for the performance of services in whole or in part. MARBACH will inform the customer about the subcontractors used upon request.

## 16 Special obligation to cooperate from software purchase is a prerequisite for installation services

Supplementary to Clause 8 of the MARBACH Installation and Repair Conditions > Section 1 Clause 5 BVB SSC connect I M

(1) The Customer shall provide or create a system environment suitable for the start of use in accordance with the respective functional and performance description of the Software and the scope of use noted by MARBACH in the order confirmation (cf. Section 1 Clause 5).

(2) In the sense of an obligation, the customer itself is obliged to obtain all necessary rights to hardware and software used by it from third parties from these third parties itself. This shall also apply in cases where the software enables indirect use of third-party software (interfaces or other connections). Clause 6 paragraph (6) of MARBACH's General Terms and Conditions shall apply accordingly if MARBACH has undertaken the procurement on behalf of the customer.

## 17 Technical support for installation and commissioning at the customer's site

Supplementary to Clause 9 of the MARBACH Assembly and Repair Conditions

to clause 9 paragraph (1)

(1) The customer shall also be obliged to provide technical assistance at its own expense, in particular to:

- Provision of the suitable assembly and installation site for the hardware prepared for the connection of the system (including precautions for data security and data protection insofar as these are not included in the MARBACH scope of services, e.g. lockable cabinets, racks, fire extinguishing, fire alarm or ventilation systems, etc.).

- Provision of the required number of sockets or electrical connections

- Provision of a stable Internet connection

- Provision of the necessary suitable skilled and support staff for (re)commissioning of the system.

(2) The legal consequences of paragraphs (2) to (4) shall also apply if the Customer fails to create or fulfill obligations to cooperate or prerequisites agreed upon or specified in the description of functions and services and thereby causes delays, obstructions or difficulties.

## 18 Acceptance

Supplementary to Clause 12 of the MARBACH Terms and Conditions for Installation and Repair

(1) Acceptance shall take place immediately after completion of the installation by commissioning of the customer system.

(2) Clause 12 paragraph (4) of the MARBACH Installation and Repair Conditions shall remain unaffected.

(3) If an overnight stay or an additional appointment is required for the commissioning according to paragraph (1) or the acceptance according to paragraph (2), the Customer shall bear the costs for overnight stay or additional travel on the basis of MARBACH's expense rates valid at the time of the performance of the service.

## Section 3: Special Terms and Conditions of Contract for User Support Services

### 19 Scope of application

(1) If a framework agreement for software maintenance, servicing and user support has been concluded (service level agreement), its terms and conditions shall take precedence over the provisions of Sections 2 and 3 of these Special Terms and Conditions.

(2) The provisions of Sections 1 and 2 (see above) shall apply to services for software maintenance, their adaptation, installation or maintenance at the Customer's premises. Services within the scope

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(3) of the warranty of the software purchase contract shall also not be subject to the provisions of this Section 3. For services for user support (support) - also insofar as they relate to the cloud services pursuant to Section 4 - the special contractual terms and conditions for remote access services (RAS) shall apply in accordance with the following provisions. Insofar as the machine or system is described there as the subject matter of the contract for the services, the following regulations for MARBACH support shall apply accordingly to the subject matter of the contract for the cloud environment (if agreed pursuant to Clause 37 Paragraph (5)) and the Customer's system, including system environment and accessories pursuant to Clause 22 Paragraph (1). (4) All support services which must be provided in person at the Customer's premises shall be provided in corresponding application of Clause 3 there paragraph (4) of the special contractual conditions for remote access services (RAS) on the basis of MARBACH's installation and repair conditions.	<b>23</b>	<b>Performance success, technical, economic and legal performance limits</b> Clause 3 of the Special Terms and Conditions for Remote Access Services (RAS) (1) Re clause 3 paragraph (2): Customers who use hardware that is not (no longer) maintained or programs that are no longer supported by the third-party provider in the system environment accept limitations to the success of performance caused by this (Clause 3 Paragraph (2)). (2) Re Clause 3 Paragraph (5): Liability for defects may also arise from the software purchase or maintenance contract itself (e.g. in the case of the detection of program errors and their provisional elimination by the possibility of circumventing the problem caused by the defect symptoms (workaround) until the delivery of the program update or in the case of the elimination of defects in the customization or installation.	
<b>20</b>	<b>Legal basis, framework agreement, conditions</b> Clause 1 of the special contractual conditions for Remote Access Services (RAS) (1) In order to receive technical support for the software and the cloud services of Section 4, if agreed, from MARBACH in addition to the warranty of Section 1 and the software maintenance of Section 2, all programs of the Customer must be properly licensed and provided with a software maintenance agreement in accordance with Section 2. (2) A prerequisite for the conclusion of the framework agreement is that the customer acquires all necessary licenses, restores the MARBACH software to the latest status or commissions its installation and restart in accordance with section 2 clause 13 paragraph (6). (3) As a rule, MARBACH grants maintenance guaranteed from the time of license acquisition for the respective current version of the licensed software. MARBACH shall only provide support for a version which is no longer current if this version is not older than two release levels behind the current release and there is an objective reason recognized by MARBACH for the missing update. (4) The provisions of clause 3 of the special contractual conditions for remote access services (RAS) and clause 22 remain unaffected. Assistance without guarantee of the success of the service is always possible. (5) The access route for MARBACH support is specified in the framework agreement. Included in the flat-rate services (bundles) is the direct service of MARBACH via the encrypted VPN tunnel set up for software maintenance and servicing, the set-up, maintenance and servicing of which is also included in the scope of services of the framework agreement if the customer requests this access path. Optionally, the services shall be provided on the basis of access software to be controlled and for which the customer is responsible (e.g. TeamViewer) on the basis of the following conditions in writing, by telephone or in person at the customer's premises. For the fulfillment of services in the MARBACH Cloud, MARBACH access to the Customer's data via encrypted VPN to the Microsoft Cloud and the Azure utilities set up for the Customer is agreed and established.	<b>24</b>	<b>Documentation, tickets in the MARBACH-Issue-Tracking-System</b> Clause 4 of the Special Terms and Conditions for Remote Access Services (RAS) (1) The documentation pursuant to Clause 4 shall be provided in reproducible image, table or text formats in a so-called support ticketing system (issue tracking system) provided by MARBACH via internet platform or cloud. MARBACH shall use a suitable service provider as vicarious agent for this purpose. (2) The individual order or call (ticket) can be placed or made by telephone call, e-mail message or direct opening of a ticket by the customer in the system. The documentation is carried out by MARBACH Support in the final report. (3) In the case of a framework agreement, the tickets of the Customer together with the complete documentation in accordance with Section 4 shall remain stored for the duration of the contract term and can be retrieved by the Customer at any time. (4) Correspondence via the support ticketing system requires a valid e-mail address (e.g. marbach.support@kundendomain.com) set up or authorized by the Customer for this purpose - which is not personalized for data protection reasons. MARBACH recommends encrypted e-mail correspondence and has set up the SMime encryption standard (cf. <a href="https://de.wikipedia.org/wiki/SMIME">https://de.wikipedia.org/wiki/SMIME</a> ). At the request and expense of the customer, another encryption standard available to MARBACH can also be set up for the correspondence.
<b>21</b>	<b>Service Level – Service package</b> (1) The contractual partners agree on individual service packages (service levels) as the basis for user support in MARBACH's order confirmation or in the framework agreement (service level agreement). The agreed service package defines the availability of support provided to the customer, the period of availability, response and problem resolution (service level). (2) If a time scope is not defined for the duration of the services in accordance with clause 19, paragraph (3) (e.g. in consulting flat rates all inclusive, hourly quotas, or similar), the basis remains the individual order or individual invoicing of the Called Services in accordance with clause 8 of the Special Terms and Conditions for Remote Access Services (RAS). The conditions can be changed by MARBACH at any time with a notice period of six (6) months to the beginning of the year with effect for the next extension period. (3) If the agreed service package is not (any longer) sufficient, the Customer may request a change at any time. He will receive a change offer from MARBACH in the ordinary course of business. (4) If the agreed service package is not (no longer) required, the Customer may request a change in compliance with the notice period of the framework agreement.	<b>25</b>	<b>Technical Requirements for RAS Services</b> Clause 5 of the Special Terms and Conditions for Remote Access Services (RAS) shall apply accordingly.
<b>22</b>	<b>Responsibility, Choice of Service Type, Placing of Order</b> Clause 2 of the Special Terms and Conditions for Remote Access Services (RAS) (1) The Customer's responsibility and decision-making authority according to clause 2 paragraph (1) et seq. of the Special Terms and Conditions for Remote Access Services (RAS) also concerns all control-relevant sensors, actuators and other components of the system and the system environment. These are accessories in the sense of paragraph (5) there. (2) The Customer creates the possibility of access to system components and system environment at its own expense and risk. The customer shall procure the rights of the third-party providers for MARBACH's access at its own expense, insofar as the component concerned is not part of MARBACH's scope of delivery. In such cases, MARBACH shall obtain the consent of the third-party provider at its own expense. (3) The individual order or request (ticket cf. clause 24) can also be issued by e-mail message to the address specified in the order confirmation or framework agreement.	<b>26</b>	<b>Access Rights, Confidentiality and Data Security</b> Clause 6 of the Special Terms and Conditions for Remote Access Services (RAS) in addition to clause 6 paragraph (2): (1) The Customer shall ensure through suitable measures in its system that access by MARBACH to the data of the connect I M SmartBox and the cloud storage is restricted in accordance with Section 4. A connection with access to data of the customer's ERP system, in particular access to personal data of debtors, creditors, employees and other data authorized persons must be excluded.
<b>23</b>	<b>Cooperation obligations of the customer</b> Clause 7 of the Special Terms and Conditions for Remote Access Services (RAS) (1) In addition to Clause 7, Paragraph (3), the Customer shall provide for appropriate training measures for those employees who use the Software and shall keep these employees up to the level of knowledge required for the use of the Software during the term of the contract.	<b>28</b>	<b>Remuneration</b> Clause 8 of the Special Terms and Conditions for Remote Access Services (RAS) (1) The remuneration shall be agreed in the order confirmation or in the framework agreement (service level agreement) in relation to the agreed service packages (cf. Section 21) and contract periods, in principle on a lump-sum basis. (2) Clause 8 paragraph (1) sentence 2 and paragraph (2) of the Special Terms and Conditions for Remote Access Services (RAS) shall always apply if a framework agreement on a flat rate basis does not exist and services pursuant to Clause 19 paragraph (3) are ordered by the Customer on a case-by-case basis or on the basis of a service time agreement (daily or hourly rate, hourly quota, etc.) pursuant to Section 21 paragraph (2).
<b>24</b>	<b>Time of performance, additional remuneration for services outside business hours</b> Supplementary to Clause 9 of the Special Terms and Conditions for Remote Access Services (RAS) (1) The telephone consulting service is available during the following standard business hours: Workdays (Monday to Friday) between 09:00 and 17:00 with the exception of national and Baden-Württemberg holidays as well as Christmas Eve (December 24) and New Year's Eve (December 31). Outside business hours, the contact persons are only available by express agreement and only in emergencies recognized by MARBACH. All additional expenses associated with services outside	<b>29</b>	<b>Time of performance, additional remuneration for services outside business hours</b> Supplementary to Clause 9 of the Special Terms and Conditions for Remote Access Services (RAS) (1) The telephone consulting service is available during the following standard business hours: Workdays (Monday to Friday) between 09:00 and 17:00 with the exception of national and Baden-Württemberg holidays as well as Christmas Eve (December 24) and New Year's Eve (December 31). Outside business hours, the contact persons are only available by express agreement and only in emergencies recognized by MARBACH. All additional expenses associated with services outside



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of business hours will be billed with the following surcharges on the hourly rate:

Billing rate Normal time  
(Mon - Fri from 9 am - 5 pm) per hour € 120.00  
Surcharges for overtime (weekdays except Saturday) for the 1st and 2nd hour 25%  
Overtime surcharges (weekdays except Saturday) for further overtime hours outside night time 50%  
Surcharges for Saturday and Sunday 50%  
Supplements for holidays 100%  
Surcharges for night work (8 p.m. - 6 a.m.) additional 50%.

(3) The availability and the agreed response and processing time of the single order (ticket) depends on the service level agreed with the customer according to clause 21 paragraph (1).

## 30 Force majeure, obstacles to performance for which MARBACH is not responsible

Clause 10 of the special contractual conditions for remote access services (RAS)

to clause 10 paragraph (1):

(1) Claims for damages are also excluded if the described circumstances occur in the sphere of a third party necessary for the provision of services by MARBACH (hardware or software suppliers in the case of procurement risk assumed by MARBACH) or a service provider commissioned by MARBACH to fulfill its contractual obligations.

## 31 Default, limitation of liability

Clause 11 of the special contractual conditions for remote access services (RAS) shall apply accordingly.

## 32 Claims for defects

Clause 12 of the Special Terms and Conditions for Remote Access Services (RAS) shall apply accordingly.

## 33 Liability

Clause 13 of the Special Terms and Conditions for Remote Access Services (RAS)

(1) Supplementary to clause 13 paragraph (2):  
Liability within the meaning of the clause shall also be excluded in particular to the extent that the damage was caused by

- Hardware components of the system and accessories (sensors, actuators) which are not kept up-to-date by the customer
- actions or omissions of the service providers used by MARBACH (analysis software, firewall, cloud,) as long as these do not violate grossly negligent or even intentional contractual obligations or the own license rules and terms of use.

(2) Supplementary to the limitation of liability pursuant to clause 13 paragraph (1) in principle:  
MARBACH shall only be liable for the recovery of data, even in the case of culpable breach of duty, insofar as the customer has taken all necessary and reasonable data security precautions in accordance with the respective state of the art and has ensured that the data can be reconstructed with reasonable effort from data material which is kept ready in machine-readable form. MARBACH's liability is limited to the effort required for data recovery.

## 34 Limitation

Clause 14 of the Special Terms and Conditions for Remote Access Services (RAS) shall apply accordingly.

## 35 Termination

Clause 15 of the Special Terms and Conditions for Remote Access Services (RAS)

(1) Addition to clause 15 paragraph (2):  
If a framework agreement has been concluded (SLA), its notice periods shall apply.  
If a software maintenance agreement forms the basis of the framework agreement for the service call, its notice periods shall apply. Unless otherwise agreed therein, section 2 Clause 12 paragraph (4) shall apply.  
If neither a framework agreement nor a software maintenance agreement has been concluded, Clause 15 Paragraph (2) of the Special Terms and Conditions for Remote Access Services (RAS) shall apply.

## 36 Confidentiality, data protection, choice of law, place of jurisdiction

Clause 16 to 19 of the Special Terms and Conditions for Remote Access Services (RAS)

(1) Supplementary to Section 16:  
Section 1 clause 11 above shall apply without restriction for the duration of the framework agreement and the documentation and retention periods beyond that. Details are described in the Non-Disclosure Agreement, the MARBACH Privacy Policy for Customers of the Remote Access Service and - to the extent required by law - the Order Data Processor Agreement pursuant to Section 1 Clause 11 Paragraph (3) and the technical and organizational measures

(TOM) for data protection and data security described therein. All vicarious agents and third-party providers with access to personal data who are called in to fulfill the contract shall be contractually obligated accordingly.

(2) Sections 17 (Choice of Law), 18 (Applicable Contractual Language) and 19 (Place of Performance and Jurisdiction for Merchants) of the Special Terms and Conditions for Remote Access Services (RAS) shall apply unchanged as the contractual basis.

## Section 4: Special Terms and Conditions for Cloud Services.

### 37 MARBACH Cloud

- (1) MARBACH Cloud Services provide a managed, hosted solution for MARBACH Software. This solution uses a public cloud delivery model on the Microsoft Azure platform.
- (2) Cloud computing is to be understood as the use of servers on the Internet to store, manage and process data. In MARBACH Cloud Services, the software runs on servers in a Microsoft data center. High scaling supports the variable customer requirements for the system.
- (3) Microsoft Cloud Services host the infrastructure used by MARBACH and MARBACH customers. This includes servers, storage, operating systems and databases. Microsoft data centers are available worldwide. This enables high performance and availability and supports the requirements of data protection according to DSGVO.
- (4) For details of the third-party provider, see <http://azure.microsoft.com>.
- (5) MARBACH Cloud Services is based on a single-tenant model, each MARBACH customer has its own logically separate data storage on Microsoft's MARBACH servers. This approach keeps data separate and secure from other MARBACH customers' instances. Unique application configurations, customizations, and integration with internal and external systems are fully supported.
- (6) Licensing of Cloud Online Services and Microsoft Azure Services will be provided by Microsoft to MARBACH Customer based on Microsoft's Online Services Volume Licensing ([Link or Deposit as discussed](#)) terms and conditions, as amended from time to time.

### 38 Access rights, protection and data security

- (1) Access to the MARBACH Cloud is subject to the Terms of Use to be agreed upon at the time of registration and the [Terms of Use for Microsoft Cloud Service \(link or deposit as discussed\)](#), as well as the Terms of Use of the application configurations implemented for Customer, customizations and its integration into internal and external systems. The sets of rules are also announced or made accessible in each case in the process of the respective measure.
- (2) A violation of terms of use can lead to the blocking of access and thus to the unavailability of the services. If the provision of services becomes impossible for MARBACH due to a culpable blocking of the customer, MARBACH is entitled to retain or claim the agreed remuneration for the period until the next possible ordinary termination of the contract (expiry of the time limit or extension).
- (3) Data protection and data security are subject to the strict rules and effective protective measures of the Microsoft data centers in which the MARBACH servers with the MARBACH customer data are housed.

### 39 Services

- (1) MARBACH shall take over the administration of the MARBACH software solution for the Customer. This includes the applications, databases and services. The service is provided by MARBACH Support with the aid of automated tools and processes and is dependent on the currently agreed service package.
- (2) MARBACH provides:
  - Installation, initialization and operation of MARBACH software and third-party products.
  - Maintenance of these products for the duration of the contract, depending on the currently agreed service package.
  - Provision of the hosting environment in accordance with the respective currently agreed service package.
  - Elimination of faults, resolution of problems on the basis of the special contractual terms and conditions for user support services (support) in accordance with Section 3.
- (3) The agreed applications and services are available on the basis of the respective terms of use and license conditions of the third-party providers, acceptance of which is a prerequisite for installation, initialization, maintenance and use. For the Azure services of the Microsoft Cloud, the [Volume Licensing Agreement on the Service Level for Microsoft Online Services \(link or deposit as discussed\)](#) applies in the respective current version. The sets of rules will also be announced or made accessible in each case in the process of the respective measure.
- (4) MARBACH will also revise the Cloud Services from time to time. During these periods - announced in advance by MARBACH and usually determined outside business hours - the MARBACH Cloud is not accessible and usable for the customers. The periods required for this and the periods of Microsoft and other third-party providers for their maintenance work combined never exceed 1.5% of the maximum possible usage time. MARBACH guarantees a minimum availability of the MARBACH Cloud of 98.5% of the maximum possible usage time.

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General Terms and Conditions of MARBACH shall only arise after knowledge of the cause and culpable non-remedy within the scope of the agreed software maintenance.

- 40 Cloud service contract, term of contract, termination**
- (1) The cloud service contract pursuant to Section 4 may be established in conjunction with a software purchase contract pursuant to Section 1 (package or bundle with MARBACH cloud services). In these cases - unless otherwise agreed - section 2 clause 12 paragraph (2) shall apply accordingly.
  - (2) The cloud service contract can also be established independently of the purchase of the software from MARBACH for a fee, but requires the use of the MARBACH software or MARBACH-compatible data interfaces for the data acquisition and transmission to the cloud.
  - (3) The term of the cloud service contract begins with the initialization of the customer's data storage and the transfer of the access data from MARBACH to the customer. The software maintenance contract ends on December 31 of the calendar year following the start of the term (example: if the contract starts on January 15, 2019, it ends on December 31, 2020).
  - (4) It shall be renewed in each case for one (1) further calendar year if it is not terminated by either party with a notice period of three (3) months prior to the expiry of the respective term.
  - (5) Section 2 Clause 12 Paragraphs (7) and (8) shall apply accordingly.

**45 Backup and recovery**

- (1) The Cloud Service includes hosting in a single highly resilient Microsoft Azure data center with backup in a second data center. For the data storage of European customers of MARBACH, the locations of the Microsoft cloud servers are in the extended area of the European Union (EEA, including Switzerland, Norway).
- (2) Backups can also be restored in the event of an Azure data center failure.
- (3) Scheduled and announced maintenance windows enable MARBACH software maintenance. There will also be occasional scheduled Azure maintenance windows from Microsoft. These will be communicated in a timely manner and are also generally outside of normal business hours.

**41 Remuneration**

- (1) The amount of the remuneration for the cloud services calculated individually for the customer for the duration of the term and to be paid annually results from the agreement in the order confirmation or cloud service agreement. The specification of the annual remuneration in the order confirmation is based on the scope of the originally agreed rights of use described there depending on the currently agreed service package in each case in accordance with 39 paragraph (1). Should the customer acquire rights of use for further services and applications, the remuneration for the cloud services shall be adjusted accordingly. If no price for the further services and applications or other changes is agreed in the contract, the parties shall reach a change agreement. If an agreement cannot be reached, MARBACH is entitled to invoice on the basis of the general price list of MARBACH valid at the time of the changes. The customer is entitled to have the invoiced price checked.
- (2) The provisions in section 2 clause 14 paragraphs (2) to (5) shall apply accordingly to the Cloud Services.

**46 Data protection**

- (1) MARBACH shall support the Customer in fulfilling its statutory audit and control obligations in accordance with the Microsoft Azure Cloud Computing Agreement during the start-up.
- (2) Within the scope of the Cloud Services, personal data is not collected, processed or stored. The Terms of Service require non-personalized access by Customer (no names, private address or contact information, or personalized email addresses of Customer's employees or its debtors or creditors).
- (3) Only the tool, machine and process data collected via sensors are collected, processed, analyzed and stored.

**47 Validity**

The Special Terms of Contract for Software License, Software Maintenance, Support and Cloud Services (SSC) for Industrie 4.0 Products and Services (connect I M) are valid for all contracts concluded as of 01.06.2021.

**42 Deletion of Customer Data, Migration**

- (1) The use of the MARBACH Cloud ends for the Customer with the term of the Cloud Services Agreement. Access will be blocked by MARBACH.
- (2) The migration of the Customer Data can be requested from MARBACH using the interfaces provided by Microsoft in the data formats intended for export. The application must be made at the latest by the deadline for the ordinary termination (clause 40 paragraph (4)). The migration is carried out at the expense and risk of the customer. MARBACH shall submit an offer for the necessary cooperation actions after the application has been submitted.
- (3) The Customer's data and its account for data storage and processing will be deleted after completion of the migration, but no later than six (6) months after the end of the contract. After that, recovery or migration of the data is no longer possible.

**43 Warranty**

- (1) MARBACH guarantees the usability of the MARBACH Cloud and the usability of the applications and services installed for the customer in accordance with Clause 39 paragraph (4). If MARBACH receives compensation for loss of use within the scope of the warranty of the third-party providers, this shall be credited to the Customer on a pro rata basis in proportion to the users of the failed service.
- (2) MARBACH guarantees the permanent software maintenance of the cloud software and all programs and services provided to the customer for use in its currently agreed service package. For the maintenance of the software of third-party providers that are listed separately in the service package, the restriction of the provision from section 1 Clause 1 paragraph (6) generally applies. Services and applications of the third-party providers that are no longer updated by them (end of life) shall either be replaced by comparable services or applications or removed from the service package against adjustment of the remuneration. In these cases, the Customer has a special right of termination for the end of the usage option announced by MARBACH with a lead time of at least six (6) months.
- (3) In addition to Clause 13 and 14 of the MARBACH General Terms and Conditions, the warranty for material defects for the MARBACH Cloud software shall be governed by Clause 6 in corresponding application.
- (4) The special contractual terms and conditions for remote access services (RAS) shall apply to user support services in accordance with the provisions of Sections 19 et seq. (Section 3).

**44 Liability**

- (1) In addition to Clause 15 of the General Terms and Conditions MARBACH, Clause 7 (4) shall apply with the proviso that liability is limited to 5% of the agreed annual remuneration.
- (2) If the damage is exclusively attributable to culpable action or omission on the part of Microsoft or a third-party provider of applications or services, MARBACH's liability is limited to the liability of Microsoft or the third party. Any own liability of MARBACH going beyond this in accordance with the principles of Clause 15 of the