

Serviceplus Conditions of ALLPLAN Schweiz AG

(Last update: 01/07/2021)

1. Scope of application

1.1 These Serviceplus Conditions shall apply to all Serviceplus Contracts (“**Serviceplus Contract**”) concluded between ALLPLAN Schweiz AG (“**ALLPLAN**”) and the customer (“**Customer**”) and include the maintenance of the software modules (hereinafter referred to as “**Software**”) purchased by the Customer from ALLPLAN as well as other services provided by ALLPLAN (“**Serviceplus Services**”).

1.2 Deviating, conflicting or supplementary general terms and conditions of the Customer shall only become part of the contract if and to the extent that ALLPLAN has expressly agreed to their validity in writing. This requirement of consent shall also apply if ALLPLAN provides the Services without reservation while being aware of the Customer’s general terms and conditions.

2. Serviceplus Services

2.1 ALLPLAN shall provide the following Serviceplus Services:

2.1.1 New versions (main version; update)

ALLPLAN shall continuously develop the Software and provide the Customer with the latest version of the Software. This can be done by providing a new main version (content enhancements) or by updating the current version. Updated versions and/or new main versions shall hereinafter be collectively referred to as “**Serviceplus Software**”. The Serviceplus Software and operating support documentation can be downloaded by the Customer via the Internet. ALLPLAN shall not be obliged to hand over the source code to its Customers. It shall be at ALLPLAN’s discretion at what intervals new versions or updates of the Software are made available and which functionalities and modules of the Software are retained, changed, modified, reduced or extended. If in this context essential functionalities of the Software are restricted or omitted without corresponding compensation, the Serviceplus fee shall be adjusted appropriately as from the time the change is made. The rights under clause 10.4 shall remain unaffected.

2.1.2 Assistance (technical support)

ALLPLAN’s technical support shall assist Customers with individual questions regarding the use of the purchased Software, both by telephone and by e-mail or, if necessary, in writing. Technical support shall be available Monday to Friday from 08:00 a.m. to 11:30 p.m. and 13:30 p.m. to 16:30 p.m. Technical support shall not be provided on Saturdays, Sundays and federal public holidays. The assistance provided by the technical support under the Serviceplus Contract shall be limited to answering individual questions. General explanations of the functionality of the Software or training in individual program sequences shall not be part of the technical support but may in part be dealt with by ALLPLAN Connect or may be ordered separately. After the development and provision of a new main version according to clause 2.1.1 above, the assistance provided by the technical support shall be limited to the current main version and the last two previous main versions. If ALLPLAN is entitled to discontinue the contractual services for a specific main version of a Software, this shall also include the right to discontinue the contractual services for Software that is technically dependent on this main version of the Software (not self-running) at that time.

2.1.3 Access to and use of ALLPLAN Connect

As part of the Serviceplus Contract, the Customer shall receive access to the ALLPLAN Connect service portal after registering. The Customer can use the services provided there (access to user forums, download of CAD objects, e-learning, online library, FAQ database) free of charge. If and to the extent that the Customer can acquire paid services via the ALLPLAN Connect portal, the General Terms of Use for the ALLPLAN Connect portal and the ALLPLAN Campus portal contained in the online portal shall apply in addition to the provisions of the Serviceplus Contract. Should they contradict each other, the provisions of the Serviceplus Contract take precedence over the General Terms of Use for the ALLPLAN Connect portal and the ALLPLAN Campus portal.

2.1.4 Trainings/regular events

The Customer shall be given the opportunity to take part in training courses at special rates and in free regular events organised by ALLPLAN. It shall be at ALLPLAN’s discretion to decide at which intervals these training courses and regular events will be held. The Customer shall be informed of the relevant dates and special rates via the ALLPLAN Connect service portal in writing or in text form.

2.2 Services not included:

2.2.1 The following services are not covered by the Serviceplus Contract, but can be agreed and invoiced separately:

- technical service at the Customer’s site
- supporting the Customer with the installation of the Software or Serviceplus Software
- training courses (but special rates for Serviceplus Customers)
- consulting services that go beyond assistance

2.2.2 Technical support shall not include:

- the administration of the computer system (hardware and operating system),
- support in the conversion of old data versions to new data versions,
 - support in converting data from third-party formats to software-compatible formats,

- or the answering of non-software-related technical questions regarding content (e.g. for the calculation of statics or for quantity take-off according to the VOB [German Construction Contract Procedures]).

2.2.3 The following services shall generally not be provided by ALLPLAN:

- hardware support
- support for third-party software, even if a connection to the Allplan Software has been created via interfaces.

2.3 Services provided by ALLPLAN that are not expressly mentioned in these Serviceplus Conditions are voluntary services by ALLPLAN to which no legal claim exists for the future, even if they are provided repeatedly. ALLPLAN shall be entitled to discontinue voluntary services at any time with a 4 (four) weeks’ notice period.

3. Serviceplus Customers’ obligations to cooperate

3.1 The Customer shall be responsible for adequate data backup to avoid possible data loss. They shall ensure that their project data created with the Software are regularly backed up and archived on external data carriers to prevent a possible loss of data.

3.2 Where Customers make use of technical support according to clause 2.1.2, any application issues that arise, especially errors, shall be documented, where possible, so that they are comprehensible to ALLPLAN (e.g. by means of screenshots, etc.) and reported immediately in sufficient detail (e.g. number of users affected, description of the system and hardware environment, simultaneously loaded third-party software, sending of system reports/logs, etc.).

3.3 Where required for ALLPLAN to provide its services under the Serviceplus Contract, the Customer shall grant ALLPLAN access, upon request, directly or by means of remote data transmission, to their hardware and computer programs where the Software, Serviceplus Software or other Serviceplus feature is located. Where required for the performance of the contractual services, the Customer shall designate in writing a responsible person to ALLPLAN, who shall have all the decision-making powers, access rights to the computer system and authorisations required for the purpose of executing the Serviceplus Contract.

3.4 Unless agreed otherwise in writing, the Customer shall be responsible for the installation of Software and/or Serviceplus Software.

3.5 ALLPLAN will fulfil its information obligations regarding to the Software and Serviceplus Software by publications on the ALLPLAN Connect service portal. Necessary publications regarding the Software and/or Serviceplus Software, including defects that have become known and their effects, shall be made exclusively on the Internet. Within the scope of their duty to cooperate, the Customer shall be required to regularly check the service area on ALLPLAN Connect.

4. Prices and terms of payment

4.1 The Serviceplus Customer undertakes to pay the user fee specified in the Serviceplus Contract. The user fee shall be invoiced in advance according to the contractually agreed terms of payment and shall be due for payment within 30 days after the invoice date. There is a 2% surcharge on the annual fee for semi-annual payments and a 4% surcharge for quarterly payments.

4.2 ALLPLAN may increase the user fee according to clause 4.1 above by giving three (3) months’ written notice once per calendar year to an appropriate and reasonable extent, and by a maximum of 3 %. The increase shall take effect upon invoicing at the start of a billing period or on the date specified in the notification.

4.3 ALLPLAN’s prices shall not include the statutory value added tax.

4.4 If the Customer is in default of payment, ALLPLAN shall be entitled to demand the statutory default interest in accordance with Section 104 of the OR. ALLPLAN expressly reserves the right to claim further damages. ALLPLAN shall also be entitled, if the Customer is in arrears with a not merely insignificant part of the user fee, to temporarily suspend the contractual services until all due claims are settled.

4.5 The Customer may only offset due claims of ALLPLAN against counterclaims that are undisputed or established as final and absolute.

5. Licence Conditions; network use; decompilation

5.1 Unless agreed otherwise, the Customer shall be entitled to use the Serviceplus Software to the same extent as the Software on which the Serviceplus Software is based. Any network use shall also be permitted to the same extent as for the underlying Software.

5.2 The Customer may only reproduce the Serviceplus Software to the extent that such reproduction is required for the contractual use of the Serviceplus Software. The required reproductions shall include the installation of the Serviceplus Software as well as the loading of the Serviceplus Software into the main memory. The Customer shall not be entitled to make any other reproductions. This shall also apply to the duplication of parts of the Serviceplus Software. The Customer shall have the right to make a backup copy of the Serviceplus Software.

5.3 The retranslation of the program code into other code forms (decompilation) as well as other types of reverse engineering of the various production stages of the

Serviceplus Software shall not be permitted. The Customer shall not be permitted to rent, lease or otherwise make the Serviceplus Software temporarily available to third parties during the term of the Serviceplus Contract. In particular, the subleasing, the transfer of the Serviceplus Software by way of Application Service Providing (ASP) or within the framework of cloud computing applications for third parties shall not be permitted.

5.4 The Customer shall not be entitled to remove or change copyright notices, serial numbers or other features of the Serviceplus Software that serve to identify it.

6. Industrial property rights of third parties

6.1 To Allplan's knowledge, there are no industrial property rights of third parties affecting the contractual use of the Serviceplus Software or other services under this contract. Allplan shall not be liable for any claims of Customers that are based on modifications of the Serviceplus Software and/or other services under the Serviceplus Contract not made by ALLPLAN or on defects of title of third-party software which is not part of the Serviceplus Software.

6.2 If the contractual use of the Serviceplus Software or other services under the Serviceplus Contract is impaired by industrial property rights of third parties, ALLPLAN shall have the right, to the extent reasonable for the Serviceplus Customer, to acquire licences and/or to modify the Serviceplus Software and/or other service or to replace it in whole or in part at its discretion and at its expense. If this fails, the Serviceplus Customer shall have the right to reduce the fee appropriately or to terminate the contract. Termination shall not be permitted if the defects of title affecting the Serviceplus Software and/or other service are of only insignificant nature. Any claims for damages shall be governed exclusively by clause 8.

7. Claims for defects arising from the provision of Serviceplus Software and/or other services

7.1 If the Serviceplus Software provided to the Serviceplus Customer is defective, the Customer shall immediately inform ALLPLAN of this in writing. ALLPLAN shall be entitled, at its discretion, to free rectification or replacement, also by providing a newer Serviceplus Software and/or other service. Should the Serviceplus Software be defective, subsequent performance may also be effected by providing a workaround, provided that the defect is completely eliminated within the scope of an updated or new version of the Serviceplus Software. ALLPLAN can also fulfil its obligation to remove defects by providing sufficient information on how to remove them. The fault analysis shall take place at the ALLPLAN headquarters. Upon request and where necessary, the Serviceplus Customer shall grant ALLPLAN access, directly or by means of remote data transmission, to their hardware and computer programs on which the Serviceplus Software and/or other service is located. If technical access is not possible or only possible under difficult conditions for reasons attributable to the Serviceplus Customer, the Serviceplus Customer shall bear the additional costs incurred.

7.2 The Serviceplus Customer's claim for the removal of defects shall be excluded if the defect is not reproducible or cannot be shown based on machine-generated output.

7.3 There shall not be any liability for defects if the occurred defects have been caused by circumstances the Customer is responsible for. This shall apply e.g., to faults resulting from the use of unsuitable operating materials (e.g., hardware, operating system, etc.) or if the Serviceplus Customer has failed to comply with the provisions of the relevant operating manuals, terms of use or installation requirements of the Serviceplus Software and this has caused the defect. ALLPLAN shall not be obliged to change Serviceplus Software to other operating systems, another hardware system, or another programming language. Furthermore, the liability for defects shall not apply if the Serviceplus Customer has changed and/or interfered with the Serviceplus Software and/or other service, unless the Serviceplus Customer proves in connection with the error message that the change was not the cause of the error.

7.4 If the repair or replacement delivery definitively fails despite two attempts made by ALLPLAN, the Serviceplus Customer shall have the right to a reasonable reduction of the user fee or to terminate the Serviceplus Contract for cause. The latter right can only be exercised if essential functions of the Serviceplus Software are significantly impaired by the defect in the Software and/or other service.

7.5 Except for claims for damages, warranty claims based on material defects shall be subject to a limitation period of two years or one year if the transaction does not involve a consumer. The limitation period shall start when the Serviceplus Software is made available for download and the Customer can access it. This shall not apply to maliciously concealed defects. Clause 8.3 shall apply to the limitation period for claims for damages.

7.6 Claims for damages shall be governed exclusively by clause 8 below.

8. Liability

ALLPLAN shall be liable, irrespective of the legal grounds, exclusively in accordance with the following provisions:

8.1 ALLPLAN shall be liable without limitation

- for intention or gross negligence,
- for damage arising from injury to life, body or health,
- according to the provisions of the German Product Liability Act, and
- if it has assumed a guarantee.

8.2 Unless clause 8.1 applies, ALLPLAN shall only be liable for slight negligence if ALLPLAN breaches a contractual obligation the fulfilment of which is a prerequisite for the proper performance of the contract, the breach of which jeopardises the achievement of the purpose of the contract and on the compliance of which the Serviceplus Customer may regularly rely (cardinal obligations). In these cases, liability shall be limited to the amount of the foreseeable damage typical for this type of contract, but at most to 200% of the contractual remuneration up to a maximum of CHF 50,000.00 per year. In all other cases, ALLPLAN shall not be liable for slight negligence.

8.3 Claims under this clause shall become statute-barred after 12 months, subject to the proviso that the statutory limitation period shall apply to claims under clause 8.1.

8.4 ALLPLAN's strict liability for defects already existing at the time the contract is concluded in accordance with Section 200 of the OR shall be expressly excluded. This shall not apply in cases of fraudulent intent.

8.5 Contributory negligence and data backup: If a damage is due both to the fault of ALLPLAN and to the fault of the Serviceplus Customer, the Serviceplus Customer shall be obliged to have its contributory negligence to be taken into account. In particular, the Serviceplus Customer shall be responsible for the regular backup of its data. If data is lost and ALLPLAN is responsible, ALLPLAN shall only be liable for the costs of duplicating the data of the backup copies to be made by the Serviceplus Customer and for reconstructing the data that would have been lost even if backup copies had been made at reasonable intervals.

8.6 To the extent that ALLPLAN's liability is excluded or limited, this shall also apply to the personal liability of ALLPLAN's employees, representatives, and vicarious agents.

9. Force majeure

9.1 If and as long as an event of force majeure exists, the parties shall be temporarily released from their obligations.

9.2 Force majeure is an event caused externally from outside the company by elementary forces of nature or by actions of third parties and which is unforeseeable according to human insight and experience, cannot be prevented or rendered harmless by economically acceptable means, even by taking the utmost care reasonably to be expected in the circumstances, and which cannot be just accepted because of its frequency. This particularly includes strikes, lockouts, official orders, the failure of communication networks and gateways, disruptions within the area of the respective service provider as well as disruptions within the area of risk of other network providers.

9.3 The parties may terminate this contract if the force majeure event continues for more than ten days and a mutually agreed modification to the contract cannot be reached.

10. Term and termination

10.1 The Serviceplus Contract shall be concluded by confirmation of acceptance or execution of the contractual services by ALLPLAN. However, the actual contract term shall only start on the first day of the calendar month following the conclusion of the Serviceplus Contract.

10.2 The contract term for the Serviceplus Contract depends on what has been agreed in the Serviceplus Contract and shall be automatically extended by a 12-months-period, unless it is duly terminated under observance of the notice period stipulated in the contract.

10.3 If the Serviceplus Contract is concluded in conjunction with an ALLPLAN Subscription Contract, the provisions on contract term and extension agreed for the Subscription Contract shall also apply to the Serviceplus Contract, in derogation from clause 10.2 above.

10.4 The Serviceplus Contract may be terminated by either party without notice for a compelling reason. ALLPLAN shall be entitled to terminate the contract without notice for a compelling reason in particular if

- the Serviceplus Customer is in default of payment of the Serviceplus fee or a not insignificant part of the Serviceplus fee for two consecutive payment dates or is in default of payment of the Serviceplus fee for an amount equal to the Serviceplus fee for two months in a period extending over more than two payment dates, or
- if the Serviceplus Customer intentionally or negligently violates the licence conditions according to clause 5.

10.5 Any termination shall be made in writing.

10.6 If the Serviceplus Contract was concluded in conjunction with an ALLPLAN Subscription Contract, the corresponding Subscription Contract shall also end when the Serviceplus Contract is terminated.

11. Deletion of the Software at the end of the contract

11.1 After the contract term ends, the Customer shall be obliged to immediately stop using all Serviceplus Services.

11.2 Installed Serviceplus Software and other documents shall be completely and permanently deleted by the Customer from all their servers. The same shall apply to any backup copies made by the Customer. This shall not apply if the Customer has purchased the Software on which the Serviceplus Software is based.

11.3 Upon ALLPLAN's request, the Customer shall immediately provide written assurance that it has fully complied with its obligations under this clause 11.

12. Privacy

12.1 The parties shall comply with the statutory provisions on data protection.

12.2 If and to the extent that ALLPLAN has access to the Customer's personal data while providing the service, the parties shall conclude a corresponding data processing agreement before processing is started and enclose it with the user contract as an attachment. In this case, ALLPLAN shall process the corresponding personal data solely in accordance with this agreement and the Customer's instructions.

13. Changes to these terms of use

ALLPLAN reserves the right to modify these Serviceplus Conditions with effect for the future. ALLPLAN shall notify the Customer of any changes and make the modified conditions available to the Customer. By using or continuing to use the Serviceplus Software and/or other services of the Serviceplus Contract after a modification, the Customer declares its agreement with the modification and its acceptance of the modified conditions.

14. Final provisions

14.1 Should the export of the Serviceplus Software be subject to national or international export regulations, the Serviceplus Customer shall obtain the consent of the competent authorities. The costs of export, such as customs duties, taxes, fees and other costs, shall be borne by the Serviceplus Customer.

14.2 No implicit, oral or written collateral agreements have been made. Amendments and supplements to this contract shall be made in writing. This shall also apply to any amendment or waiver of this written form requirement clause.

14.3 The Serviceplus Customer shall not be permitted to assign or transfer the Serviceplus Contract or any of their rights or obligations arising from this contract to third parties without obtaining ALLPLAN's prior written consent. ALLPLAN shall not unreasonably withhold such consent.

14.4 Both contracting parties undertake to use all knowledge of confidential information, company and/or business secrets of the other contracting party obtained within the framework of the contractual relationship only for the purpose of implementing the contract and to keep such knowledge confidential for an unlimited period of time.

14.5 Should any provision of the Serviceplus Contract or of these Serviceplus Conditions be invalid or unenforceable in whole or in part or should they contain a gap, this shall not affect the validity of the remaining provisions. In this case, the invalid provision shall be replaced by a valid and enforceable regulation that comes closest to the economic and legal purpose pursued by the invalid provision. The same shall apply to contractual gaps.

14.6 The Serviceplus Contract as well as these Serviceplus Conditions shall be governed by swiss law and the UN Convention on Contracts for the International Sale of Goods.