

Supplementary Terms & Conditions of Software Maintenance & Support Agreement for Durst Smartshop

The following Terms & Conditions form the basis of the Software Support and Maintenance Agreement concluded between DURST Professional Services GmbH, registered with the Commercial Register of Bozen, REA-number: BZ – 218994, fiscal number: 02947850216, Julius-Durst-Straße 4, Brixen, 39042 Italy (hereinafter: “DURST”) and the contractual partner (hereinafter: “Principal”).

These contract terms shall not supersede the general terms and conditions (license terms and conditions of DURST), but rather they are more specific provisions for the support and maintenance of software. In the event of contradictions between the general terms and conditions and the present contract terms, the present contract terms shall precede. Insofar as any circumstance is not regulated in the present contract terms, the general terms and conditions of DURST shall apply.

DURST mediates and organizes the provision of a server on which the software is stored and on which it runs and covers the monthly fees. The server is provided by the service provider made known by Durst (hereinafter also: “Service Provider”) and for the using of server the terms and conditions of the Service Provider shall apply. Those are available under: <https://durst-professional-services.com/en/imprint>.

The present contract terms shall be deemed as accepted at the latest with the use of the Software. The contracting parties agree that the general terms and conditions of the Principal shall not apply. This also applies if the Principal refers to its terms and conditions of business and/or its terms and conditions of purchase by counter-confirmations or in any other way.

1. SUBJECT-MATTER OF THE AGREEMENT

(1) DURST shall assume the support of the DV programs described in detail in the offer/order confirmation (hereinafter “**Programs**”). Any function extensions of the Programs that go beyond the current development status at the moment of first approval require a separate upgrade agreement.

(2) The support shall also extend to the (digital or analogue) documentation belonging to the Programs as well as to data stocks (files, data base material) that are part of the Programs.

(3) The general terms and conditions (license terms and conditions of Durst Professional Services GmbH) of DURST shall apply. The general terms and conditions are available on the website of DURST. At the latest upon receipt of the Programs, these terms and conditions are deemed accepted. The contracting parties agree that the general terms and conditions of the Customer shall not apply. This also applies if the Customer refers to its

terms and conditions of business or, respectively, its terms and conditions of purchase by counter-confirmations or in any other way.

2. SCOPE OF SERVICES

(1) DURST provides an on-call maintenance service for remedying defects that occur during the use of the Programs and/or become apparent in the associated application documentation. A defect is given if the Program does not fulfil the functions specified in its specification of services, delivers incorrect results, interrupts its run in an uncontrolled manner or otherwise fails to function appropriately so that the use of the Program is prevented or impaired. The maintenance service includes a one-off instruction of the personnel of the Principal on the scope and type of the work carried out.

(2) The contractual software support services („**Support Services**“) include:

- operation of a maintenance service to maintain the operational availability of the Programs at the Principal and to eliminate defects occurring in the Programs;

- the elimination of defects in the Programs (i.e. through the delivery of service releases);

- user support via ticket system for all licensed users, however, only for a maximum amount of 2 (two) hours per month. Any further user support will be charged according to the price list respectively valid. Invoicing shall be per commenced hour.

(3) Additionally, DURST shall provide a preventive maintenance service to remedy defects which become known to DURST in the Programs regardless of their use by the Principal (creation of service releases).

(4) Remedying defects includes locating the cause of the defects, diagnosing the defects as well as remedying the defect or, if this is not possible with justifiable efforts, making the Program ready for operation by working around the defect. Remedying the defect in the Program also includes the rectification of the associated application documentation.

(5) After DURST has received a maintenance request in writing (via ticket system) from the Principal for the Program, DURST shall carry out the maintenance at its own discretion also at the installation site. The prerequisite for carrying out the maintenance service is the operational readiness of the DV unit on which the Program is installed.

(6) The Principal will send all user questions via e-mail to DURST. These questions are answered by DURST at its discretion, by ticket system or by telephone. Any further requests, thus requests that do not relate to Support Services, are to be remunerated accordingly. The costs are based on the price list respectively valid.

(7) DURST shall be entitled to use agents at its choice, provided that the agent used has previously assumed obligations vis-à-vis DURST which correspond to the confidentiality obligations of DURST vis-à-vis the Principal in accordance with sec. 9.

3. SUPPORT AVAILABILITY/CONTACT PERSON

(1) The maintenance service shall be carried out on working days from Monday to Friday between 9 a.m. and 6 p.m. CET, respectively. For the avoidance of doubt it is pointed out that public holidays are not deemed as working days.

(2) Both contracting parties shall designate, each, one or several responsible contact person(s) for the duration of the contract. The contact persons of the Principal must be licensed, i.e. they must have completed successful training of the Program with DURST.

4. COMPENSATION

(1) For the Support Services, DURST shall receive the agreed remuneration plus the value-added tax respectively applicable from the Principal.

(2) Payments shall become due within 30 days after receipt of invoice by the Principal. The Support Services are only invoiced from the 4th month after the sale of the license (the invoice date of the license purchase applies).

(3) The agreed remuneration amount for the Support Services is inclusive of the Server Hosting Fee.

5. RIGHTS TO WORK RESULTS

(1) For the support of Programs which DURST has surrendered to the Principal for use within the framework of an agreement on transfer of possession (software license contract), DURST grants to the Principal the right to use the work results of the contractual support works as part of this contract.

Only DURST may freely dispose of ideas, processes, concepts and other techniques which come into being during the execution of the contractual support and which are included in the work results pursuant to par. 1. The same shall apply to know-how and experience which are gained during the execution of the contractual support works and the use of their results.

6. THIRD-PARTY RIGHTS

For Programs that DURST has made available to the Principal for use within the framework of an agreement on transfer of possession, DURST assures that it possesses the right to make changes to these Programs or to have these changes made. DURST shall indemnify and keep indemnified the Principal against all claims which are asserted by third parties due to the changes to the Programs made by DURST.

7. WARRANTY AND LIABILITY

(1) DURST guarantees that the Programs have the functions specified in the specification of services during the contract period. The warranty provisions laid down in the agreement on transfer of possession (software license contract) shall remain unaffected thereof.

(2) Defects and other circumstances indicating the necessity of support measures shall be reported to DURST by the Principal in writing immediately, however, at the latest within 5 (five) working days from the date the Support Service is carried out (requirement to give notice of defects). It is explicitly stated that the requirement to give notice of defects also applies to the performance of defective Support Services as such. If the Principal does not complain at all or in due time, the Principal shall lose its warranty claims and the Support Service shall be deemed as approved.

(3) The warranty period for hidden defects shall be one year from the acceptance of the respective Support Service. Warranty claims from previous versions of the software shall be deemed as statute-barred (and defects as remedied) as soon as a new service release has been installed and the defects therefore have been eliminated.

(4) DURST shall – except for personal damages – exclusively be liable for gross negligence, however, the exclusion of liability does not apply to completely unforeseeable or atypical damages the Principal could not expect. The liability for foreseeable data loss and foreseeable consequential damages, in particular for loss of profit, is thus – except in case of intent – excluded. Otherwise, DURST shall only be liable for data loss if this could not have been avoided by due data backup by the Principal. The liability of DURST is in any case limited to the amount of the one-time or annual fee, depending on which amount applies, agreed by the Principal for the Support Services acquired from DURST according to the present contract terms.

8. TERM OF THE CONTRACT

(1) The obligation to perform begins, unless otherwise agreed by the contracting parties, with the acquisition of the rights to use the Program (license purchase of the software / subscription to SaaS software).

(2) A termination of the maintenance service has serious consequences for the functionality of the license used and, generally, leads to the inoperability of the software. Therefore, it is strongly recommended to conclude the offered maintenance contract for the duration of the license used immediately upon ordering the license.

9. MISCELLANEOUS

(1) Amendments of and additions to this contract require the written form. This shall also apply to this clause and the waiver of this written form provision. Written form in the sense of this contract requires a legally signed paper document in the original. Fax, computer fax or e-mail messages are not sufficient, unless otherwise agreed in the individual case.

(2) If individual provisions of this contract are not legally effective or if they lose their legal effectiveness due to a later circumstance, or if a gap becomes apparent in this contract, the legal effectiveness of the remaining provisions shall not be affected thereof. Instead of the ineffective contractual provisions or to fill the gap, an appropriate stipulation which, to the extent possible, comes closest to what the contracting parties would have wanted if they had considered this point.

(3) The court having substantive jurisdiction for Lienz/Austria shall have exclusive jurisdiction for all disputes arising out of and in connection with a contract concluded between DURST and the Customer, including questions as regards the valid conclusion of the contract. Moreover, DURST is also entitled to sue the Customer at the court having jurisdiction for the seat of the Customer.

(4) Exclusively Austrian law under exclusion of the national and European conflict-of-laws rules and the United Nations Convention on Contracts for the International Sale of Goods (CISG, UN Sales Law) shall be applicable.

Annexes

Sec. 2 par. 4 and sec. 7 par. 4:

Error class 1:

The appropriate or, respectively, economically reasonable use of the overall system is not possible pursuant to the specification of services or is so restricted or, respectively, impaired by non-function or malfunction(s) of Programs, modules or components that the day-to-day business cannot be reasonably continued.

Reaction time: 48 h Period for remedying defects: 2 weeks

Error class 2:

The appropriate or, respectively, economically reasonable use of the overall system is significantly restricted or, respectively, impaired pursuant to the specification of services, however, the day-to-day business can still be executed.

Reaction time: 72 h Period for remedying defects: 3 weeks

Error class 3:

The appropriate or, respectively, economically reasonable use of the overall system is only insignificantly restricted or, respectively, impaired pursuant to the specification of services, i.e. without any significant effects on the functionality of the overall system.

Reaction time: 20 working days Period for remedying defects: next release

Error class 4:

Other defects, i.e. imperfections of the Program which do not impair its functionality, which, however, are more or less troublesome.

Reaction time: 60 working days Period for remedying defects: next release

Maintenance remuneration pursuant to sec. 4 par. 1

The maintenance remuneration is determined in accordance with the software license contract on which the Programs are based (offer/order confirmation) and documented there.

Any remuneration going beyond this for user support via telephone and the processing of written requests:

EUR 180.00 per hour plus national taxes

Beginning of the obligation to perform pursuant to sec. 8 par. 1:

The obligation to perform shall apply from the invoicing date for the license.

Term of the contract pursuant to sec. 8 par. 1

The term of the contract shall be one calendar year, respectively, which shall be extended by one year, respectively, unless the contract has been terminated in writing six months prior to expiry.

Calculation period sec. 4 par. 1

The calculation period is the respective calendar year. The first calculation period begins with the obligation to perform and ends on 31-12 of the following year.