

GENERAL TERMS AND CONDITIONS FOR MAINTENANCE OF SOFTWARE

Edition: 08/2018

THIS END USER LICENSE AGREEMENT ("AGREEMENT" OR "EULA") IS A LEGAL AGREEMENT BETWEEN YOU (ALSO REFERRED TO AS THE "CUSTOMER") AND TRANSWARE AG („TRANSWARE" OR "TW") THAT GOVERNS THE USE OF AND YOUR OBLIGATIONS FOR THE MAINTENANCE OF SOFTWARE DISTRIBUTED UNDER THIS EULA.

This EULA shall supersede any additional or inconsistent provision in any deviating CUSTOMER terms and conditions, purchase order or elsewhere, and all such additional or inconsistent provisions are hereby expressly rejected and shall not be binding upon TRANSWARE. CUSTOMER hereby agrees that TRANSWARE's failure to specifically object to any such provision submitted by CUSTOMER shall not constitute an acceptance by TRANSWARE thereof nor shall it constitute an acceptance by TRANSWARE of any waiver of, or modification to, the provisions hereof.

1. Subject

For software purchased on the basis of the General Terms of Conditions (GTC) for the provision of software, TW will provide services in accordance with the following conditions for the programs ("software") listed in the license certificate during the term of the software maintenance agreement:

TW will provide the following software maintenance services as a **standard SLA (Service Level Agreement)**

1.1. Software Support Service

Provision of an electronic service desk system for trouble tickets

1.2. Software Update Service

Provision of the latest version for software licenses

Provision of software corrections as patches, fixes or workarounds

Exclusions

The following in particular are not covered by the services to be rendered by TW:

- Provision of licences for additional TW software.
- Provision of software for the system environment.
- Provision of services beyond the standard SLA
- Remedy of faults which are not inherent in the software, e.g. faults due to operator errors, other external influences, especially violence and intervention by third parties, like the installation of third-party products.
- Training and instruction on usability, configuration and customization.
- Adapting the software to (new) requirements of the customer.

Such performances may be agreed separately.

2. Software Support Service

Support service is provided by an electronic service desk system provided by TW. TW grants user accounts to Customer's support personnel to access the service desk (authorized service desk users). Customer's support service will contact the electronic service desk by email in case of any issues with the software. The service desk is the central media for the communication. Customer's support personnel ensures communication with end users (First-level-support). The maintenance fee comprises a limited number of service desk accounts depending on the customer's license count. The count of tickets in the service desk is not limited.

The service desk is available round-the-clock. Incoming reports are processed during TW office hours, Monday – Friday 9-12 AM and 1-5 PM CET except on statutory and local public holidays at the headquarters of TW.

Enquiries relating to the use of the software will be answered where possible within the scope of the Support Service. These enquiries are limited to the direct software functions; in particular, the Support Service does not include any advice on suitability or training for certain environments or certain purposes. User specific configurations, customizations or amendments are not covered by support service but have to be agreed upon as separate professional services.

Each new service desk notification of a customer initiates a trouble-ticket with unique identification. All communication relating to this ticket will be recorded and retrievable by the ticket number. Depending on the qualification of the customer's note, TW will decide upon action and means to resolve the ticket according to the following incident resolution table:

Prio	Description	Resolution activity	Resolution time
1	SEVERE: Incident causing inoperative Software or preventing use of major Software functions	Acknowledgment	Less than 2 hours
		Incident analysis	Within 24 hours
		Patch, temporary fix	Continuous efforts until resolved
		Final fix	Continuous efforts until resolved
		Communications	Continuously through Business Hours
2	DEGRADED OPERATIONS: Incident disabling specific non-essential Software functions;	Acknowledgment	Less than 8 hours
		Incident analysis	Within 3 business days
		Work Around, Update	As soon as available
		Communications	As required through Business Hours
3	MINIMAL IMPACT: Minor deviation from specification not effecting usability of Software	Acknowledgment	Less than 24 hours
		New Software release	Usual Release Cycle
		Communications	Software Release Notification

Table 1 Incident Resolution Table in Standard SLA

Further services or other resolution times need to be agreed between TW and customer as supplementary performances in writing, e.g. as a customer individual SLA.

3. Software Update Service

Within the scope of software Update Service TW will maintain its Software and provide new versions at its sole discretion. Once new versions are released TW will make them available to customers with licenses of the Software under maintenance. All rights granted with the Software license will remain valid for new releases as well.

To effect delivery of the new version, TW will make the new version available for downloading by the customer. New software versions must be downloaded by the customer on delivery and checked for defects.

With each new software version TW provides information on functional changes, enhancements and bug-fixes as well as technical prerequisites and guidelines for installation. It is customer's responsibility to fulfil technical preconditions for new software versions, e.g. ensure that correct versions of the operating system or other third-party software is installed.

3.1. Troubleshooting

- i. Any issues in the software must be reproducibly documented by the customer by example data, log files, configuration files, example deliverables, screen shots and problem description and reported to TW immediately following their discovery. All troubleshooting is executed in a customer service desk provided by TW. During the term of the maintenance agreement, TW will investigate and analyse the case described by the customer and the troubleshooting is guided according to the resulting classification (Software issue, configuration issue or other). If appropriate TW will call the customer or provide web meetings for further problem analysis.
- ii. TW is entitled to remedy software issues by providing the customer with a modified software release version in which the defect does not occur.
- iii. Software issues may also be remedied through a workaround bypassing the error, provided that the functionality of the software is not diminished, or only marginally, as a result.
- iv. TW may, where reasonable for the customer, inform the customer of action to be taken by the customer itself in order to prevent the defect (work around). The customer is obliged to follow such advice. This may apply to both software issues and to configuration issues, e.g. by modification of input data, parameters or technical means. If configuration issues require modification of the custom configuration such service is chargeable and can be provided by TW upon request.
- v. On customer demand TW provides chargeable services for e.g. development, professional services or consulting for customizing, parametrization, rework of software configurations, technical consulting or training. Services are charged based on T&M (times and material) with EUR 200,00 per hour on hourly basis.
- vi. The customer is obliged to assist TW in analysing and correcting errors and shall permit access to documents detailing the circumstances in which the error occurred. If agreed upon the customer may grant TW and its support personnel technical access to the software e.g. via remote access.
- vii. If it is found that a defect reported by the customer does not actually exist or is not attributable to a software listed in the license certificate, and if the customer has reported the defect by wilful intent or through gross negligence, TW shall be entitled to charge the expenses incurred for analysis and other processing in accordance with the current price list for services.

3.2. Requirements for performance by TW

- i. Performance by TW presupposes that the customer uses the latest version of the Software released and provided by TW. If the customer is using an older version, TW may refuse performance or render the performance in return for separate remuneration of the associated additional effort.
- ii. Performance by TW also presupposes that the customer uses the Software in an environment (operating system, third party products) as described in the latest version of the Software Release Notes.

3.3. Customer's duty to participate

- i. Error messages and enquiries for the service desk system must be internally coordinated by the customer so that contact with TW is bundled in packages.
- ii. The customer must make the software available, as well as suitable personnel and computer time in its system, when TW carries out the maintenance service in the customer's premises.
- iii. In case TW performs services through remote data transmission, suitable operational devices and software must be provided by the customer at the latter's expense.

4. Remuneration

- i. The maintenance fee is billed according to purchase orders and service agreements. The maintained Software, the Service Level and the Fees are documented in a license certificate issued by TW. The prices indicated apply net, plus the statutory value-added tax as applicable in each case.
- ii. The maintenance fee is calculated for the maintenance term or period agreed upon and due in advance for the term or period. If an initial maintenance term or period is not starting at the beginning of a month or year, the remuneration will be calculated on a pro rata basis.
- iii. Note: In case of Fixed Term Licenses the term also defines the maintenance term, its fee and conditions for renewal or termination.
- iv. With the exception of Fixed Term Licenses TW is entitled to increase the maintenance fee for licensed software with three months' written notice effective prior to the end of a maintenance period and the customer may in such case terminate the maintenance agreement within six weeks of receiving notice of the increase.

5. Secrecy

The contracting partners undertake to treat the other party's confidential information and documents as company secrets.

6. Limitation of the amount of damages

TW shall be liable for losses regardless of the legal foundation, including default, defective performance or non-contractual liability

- i. without limitation of the amount of damages for wilful intent or gross negligence by TW or its executive employees, for gross organisational fault, and regardless of the degree of fault in cases of bodily injury for which TW is responsible, as well as in the absence of software properties warranted by TW.
- ii. limited to the typical foreseeable loss under the contract in cases of culpable breach of material contractual duties, as well as in cases of wilful intent or gross negligence by vicarious agents of TW, insofar as case i. does not apply.
- iii. limited per loss to the contractual remuneration in cases of default or initial impossibility, insofar as cases i. or ii. do not apply accordingly.
- iv. Further damages shall be excluded.

Liability under product liability law remains unaffected.

The customer must accept a contributory fault on its part. If data are lost, TW shall be liable for no more than the costs of reproducing data from backups, as well as for reconstructing data which would have been lost even if backups had been produced regularly and correctly by the customer. The customer is responsible for producing the backups.

7. Term and termination

7.1. Fixed Term Licenses

The maintenance term is aligned in time with the term of a Fixed Term License. Termination of maintenance is also bound to the termination of a Fixed Term License. There is no maintenance renewal without renewal of a Fixed Term License and no maintenance termination without termination of the joint Fixed Term License.

Terms and renewal or termination conditions are defined in the quotes and purchase orders.

7.2. Software licenses other than Fixed Term License

The maintenance agreement shall start on the date specified in the purchase order or otherwise agreed between TW and customer and shall be binding for an initial term of 24 months. Maintenance will automatically renew for further 12 months unless terminated by either party according to the terms of this agreement.

Ordinary notice of termination may be given three months before the end of the current term. The contract cannot be terminated before expiry of the initial term. Notice of termination shall be given in writing.

The right to extraordinary termination for good cause shall remain unaffected. Good cause shall apply, in particular, in the following cases:

- i. If the customer is more than two months in arrears with payment of the remuneration.
- ii. If the contracting partner's financial standing deteriorates, if insolvency proceedings are instituted against the contracting partner or refused for lack of assets, or if cancellation or liquidation of the contracting partner has been requested or entered in the Register of Companies.

The right to use the software will remain when automatic renewal of the maintenance is terminated but renewal of an expired maintenance is not possible. Maintenance is solely available with the licensing of software.

8. Miscellaneous

Rights and duties under this contract may only be assigned with the consent of TW.

Only claims which are undisputed or unappealable may be set off against the claims of TW by the customer.

The present contract shall be governed by German law. The UN Convention on the International Sale of Goods (CISG) shall be excluded.

Place of jurisdiction shall be the location of TW.

Amendments and supplements to this contract shall only be valid if set out in writing. This shall also apply for any amendment of these provisions.

If one or more provisions of this contract prove invalid, this shall not affect the validity of the remainder. The contracting partners undertake to replace the invalid provision with a valid ruling meeting the economic intention of the invalid provision to the greatest possible extent. Until such a ruling is agreed, the invalid provision shall be replaced by a clause meeting the economic intention of the invalid provision as best as possible. The same also applies if the contract contains a loophole requiring correction.