

GENERAL TERMS AND CONDITIONS FOR MAINTENANCE OF SOFTWARE

Edition: 06/2021

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

This AGREEMENT 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, unless TRANSWARE expressly agrees to such terms and conditions.

1. Subject

For SOFTWARE purchased on the basis of the General Terms of Conditions (GTC) for provisioning of software, TRANSWARE will provide MAINTENANCE in accordance with the following conditions for SOFTWARE listed in the license certificate during the term of the software maintenance agreement:

TRANSWARE will provide the following MAINTENANCE as a standard SLA (Service Level Agreement).

1.1. Software Support Service

Provision of an electronic service desk system for trouble tickets.
Details see sec. 2.

1.2. Software Update Service

Provision of the latest version for the software LICENSES
Provision of software corrections as patches, fixes or workarounds
Details see sec. 3.

Exclusions

In particular the following services are not covered by the contractually agreed services to be rendered by TRANSWARE:

- Provision of licences for additional TRANSWARE software.
- Provision of software for the system environment.
- Provision of services beyond the standard SLA
- troubleshooting which are not inherent in the SOFTWARE, e.g. issues 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

CUSTOMER's support personnel ensures communication with end users (first-level-support). Second- and third-level support service is provided by an electronic service desk system provided by TRANSWARE. TRANSWARE grants user accounts to CUSTOMER's first-level-support personnel to access the service desk ("authorized service desk users"). CUSTOMER's support service will use electronic forms of the service desk to describe issues with the software. The service desk is the central media for the communication. The maintenance fee comprises a limited number of service desk accounts corresponding to the CUSTOMER's LICENSE count. The count of tickets in the service desk related to a CUSTOMER's LICENSE is not limited.

The service desk is available 24/7. Incoming reports are processed during office hours, Monday – Friday 9-12 AM and 1-5 PM CET/CEST except on statutory and local public holidays at the headquarters of TRANSWARE.

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, TRANSWARE 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 TRANSWARE 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 TRANSWARE will maintain its SOFTWARE and provide new versions at its sole discretion. Once new versions are released TRANSWARE will make them available to CUSTOMERS with LICENSES of the SOFTWARE under MAINTENANCE. All rights granted with the LICENSE will remain valid for new releases as well.

To effect delivery of the new version, TRANSWARE 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 TRANSWARE 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 TRANSWARE immediately following their discovery. All troubleshooting is executed in a CUSTOMER service desk provided by TRANSWARE. During the term of the maintenance agreement, TRANSWARE 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 TRANSWARE will call the CUSTOMER or provide web meetings for further problem analysis.
- ii. TRANSWARE is entitled to remedy SOFTWARE defects by providing the CUSTOMER with a modified SOFTWARE release version in which the defect does not occur.
- iii. SOFTWARE defects 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. TRANSWARE 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 defects and to configuration defects, e.g. by modification of input data, parameters or technical means.
- v. On CUSTOMER demand TRANSWARE 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 (time and material) according to the then current rates of TRANSWARE.
- vi. The CUSTOMER is obliged to assist TRANSWARE in analysing and correcting defects and shall permit access to documents detailing the circumstances in which the defect occurred. If agreed upon the CUSTOMER may grant TRANSWARE 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, TRANSWARE 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 TRANSWARE

- i. Performance by TRANSWARE presupposes that the CUSTOMER uses the latest version of the licensed SOFTWARE released and provided by TRANSWARE. If the CUSTOMER is using an older version, TRANSWARE may refuse performance or render the performance in return for separate remuneration of the associated additional effort.
- ii. Performance by TRANSWARE also presupposes that the CUSTOMER uses the SOFTWARE in an environment (operating system, third party products) according to the actual system prerequisites and as described in the latest version of the SOFTWARE Release Notes.
- iii. Processing of tickets in the service desk is subject to a qualified and detailed description of the incident.

3.3. CUSTOMER's duty to co-operate

- i. Issues and enquiries for the service desk system must be internally coordinated by the CUSTOMER so that contact with TRANSWARE is bundled in packages.
- ii. The CUSTOMER must make the SOFTWARE available, as well as suitable personnel and computer time in

- its system, when TRANSWARE carries out the maintenance service in the CUSTOMER's premises.
- iii. The CUSTOMER warrants that first-level support is staffed with qualified and trained personnel only.
 - iv. In case TRANSWARE 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 calculated according to the number of LICENSES in the license portfolio. The licensed SOFTWARE, the GTC versions and the remunerated fees are documented in a license certificate issued by TRANSWARE. 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.
- iii. Note: In case of Fixed Term Licenses the term also defines the maintenance term, its fee and conditions for renewal or termination.

5. License Audits

TRANSWARE is entitled to carry out a software license measurement to check the software licenses and the related maintenance contracts used by the CUSTOMER once a year or on justified grounds. The aim of the measurement is to determine the use in accordance with and the agreed contracts. TRANSWARE is entitled to set up its SOFTWARE in such a way that the usage information relevant for licensing is recorded. TRANSWARE will not evaluate personal user data to measure performance or behavior. The audit is carried out solely by TRANSWARE on the basis of a measurement report, the CUSTOMER does not incur any costs for the measurement and the software operation is not impaired. The CUSTOMER undertakes to support a measurement according to the specifications of TRANSWARE, in particular to provide a measurement report within 4 weeks after request by TRANSWARE. Only TRANSWARE tools may be used for the measurement. If the License Audit results in an increased degree of utilization compared to license and maintenance agreements, TRANSWARE is entitled to demand an adjustment of the respective agreements and entitled to charge the CUSTOMER retroactively from the beginning of such use.

6. Confidentiality

The parties agree to maintain confidentiality regarding confidential information. "Confidential Information" shall mean all information and documents of the respective other party, which are marked as confidential or which are to be regarded as confidential due to the context, in particular business secrets, operational internals, technical specifications, source code and other know-how.

Only such Confidential Information shall be exempt from this obligation

- i. **which was demonstrably already known to the receiving party at the time of its provision or which subsequently becomes known without any breach of confidentiality;**
- ii. **which is publicly known at the time of its provisions or becomes publicly known thereafter, provided this is not based on a breach of confidentiality;**

CUSTOMER is prohibited from obtaining Confidential Information by means of reverse engineering. "Reverse Engineering" shall mean all actions, including observing, testing, examining, deconstruction and reassembling, with the aim of obtaining Confidential Information.

Except in the cases of § 5 of the German Trade Secrets Act (GeschGehG), the obligation to maintain confidentiality shall not apply if the CUSTOMER is obliged to disclose the Confidential Information by statutory law or on the basis of a final or legally binding decision by the competent authorities or a competent court. In this case, CUSTOMER shall immediately inform TRANSWARE of the obligation to disclose. In addition, the CUSTOMER shall indicate in the course of such disclosure that, if applicable, the disclosure concerns business secrets, and shall work towards making use of the provisions of §§ 16 ff. of the German Trade Secrets Act (GeschGehG).

7. Limitation of liability

TRANSWARE shall be liable for losses regardless of the legal foundation

- i. without limitation of the number of damages for wilful intent or gross negligence by TRANSWARE or its executive employees, for gross organisational fault, and regardless of the degree of fault in cases of injury to body, life or health for which TRANSWARE is responsible, as well as in cases of a guarantee for the condition of the SOFTWARE BY TRANSWARE.
- 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 TRANSWARE, insofar as case i. does not apply.
- iii. 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, TRANSWARE 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.

Any claims arising out of this section shall become statute-barred two (2) years after the claim arose.

8. Term and termination

8.1. Fixed Term Licenses

The maintenance term is aligned in time with the term of a Fixed Term License. The maintenance agreement automatically ceases without termination with the end of the term of the 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.

8.2. Perpetual Licenses

The maintenance agreement shall start on the date specified in the purchase order or otherwise agreed between TRANSWARE and CUSTOMER and shall be binding for an initial term of 2 years. For the subsequent maintenance periods, TRANSWARE shall submit an offer to the CUSTOMER upon request in each case.

After the initial term ordinary notice of termination may be given three months before the end of the current 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 in material breach of this agreement.
- ii. if the CUSTOMER is in default of payment of invoices from TRANSWARE for 3 consecutive months or an amount equivalent to 3 months.
- iii. if a petition in bankruptcy, insolvency or similar proceedings has been filed or is threatened against the CUSTOMER.

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.

9. Miscellaneous

9.1. Binding Effect/Assignment

This agreement is binding upon the parties' respective representatives, successors and assigns; however, CUSTOMER shall not assign or transfer, whether by operation of law or otherwise, this agreement, the use of the SOFTWARE, or CUSTOMER 's rights and obligations under this agreement, without the prior written consent of TRANSWARE. TRANSWARE shall be entitled to assign this agreement to any purchaser of TRANSWARE's rights to any of the SOFTWARE.

9.2. Remedies

Nothing in this agreement is intended to waive or limit any remedy available to TRANSWARE at law or in equity, including without limitation any remedy available under international copyright laws.

9.3. Additional Provisions

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

Nonperformance is excused to the extent it is rendered impossible by fire, flood, acts of terrorism, earthquake, governmental acts or orders or restrictions, failure of suppliers, power failure, pandemics, strikes or other circumstances in which failure to perform is beyond the control and not caused by the negligence of the nonperforming party (force majeure).

All notices must be addressed to the president of the party and either sent registered or certified mail, return receipt requested or by commercial courier service with signature verification of receipt, or served personally.

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.

9.4. Governing law

The parties agree that the United Nations Convention on contracts for the International Sale of Goods is excluded from application to this agreement. The governing law shall be that of the Federal Republic of Germany without regard to conflict of laws principles. The legal venue is the competent court at TRANSWARE's registered office.

9.5. Privacy policy

TRANSWARE processes CUSTOMER's personal data according to legal requirements, in particular GDPR and German Data Protection Act (BDSG). If necessary, in individual cases, the parties will conclude an agreement on the processing of personal data on behalf (DPA).

Personal data requested by TRANSWARE in the purchase and payment process are treated as confidential and are not disclosed to third parties as further described at <https://www.transwareag.com/privacy.html>.