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» Terms of support





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1 Subject matter

1.1 General

Subject of the following regulations is the supply of support services by ORDAT that are based on a contract – later referred to as the support contract – and provided

- » for agreed software products that are regularly indicated in the annex of the support contract,
- » and for software products additionally purchased in the contract period by the contract partners of ORDAT – later referred to as the licensee – that are involved in a contractual relationship by separate agreements.

1.2 Services from other agreements

Debugging, rework or other support services provided by ORDAT within the framework of separate contractual agreements with the licensee, particularly agreements on the purchase and licensing of software products, are not covered by the present agreement.

1.3 Scope of general terms and conditions

The general terms and conditions of ORDAT apply to all services agreed in the support contract and form part of it as an annex.

1.4 Order of relevance in case of doubt

When disagreeing with the regulations of the contract or the general terms and conditions of ORDAT, consult the following agreements in the order of relevance stated below:

- » License agreement along with its annexes concerning software and charges,
- » Terms and conditions for support services,
- » General terms and conditions annexed to the support contract,
- » Separate license agreements provided along with the standard software and/or patches, upgrades, or new versions, normally referred to as the "End User License Agreement" or abbreviated EULA.

2 Range of support services supplied by ORDAT

During the term of validity of the present support contract, ORDAT provides services for the software explicitly stated in the contract. These services are charged with a monthly service fee – later specified in section 6 – that is itemized in the annex of the support contract.

2.1 Providing patches and upgrades

During the term of validity of the present support contract, ORDAT provides the licensee with online available ready-for-sale patches and upgrades of the software products specified in the support contract.

- » According to the recent regulations, a patch is a reworked or modified version of a software already purchased by the licensee. It fixes security vulnerabilities and other bugs, and improves usability and performance.

» Range of support services supplied by ORDAT

- » According to the recent regulations, an upgrade is the partial extension of a software already purchased by a licensee with respect to operability and efficiency.
- » However, a new version of a software product is not subject matter of the present service obligations. On request, it must be purchased by the licensee at extra cost. New versions are not just characterized by significantly better operability and efficiency compared to other products of ORDAT already available in the market, but also by modifications in terms of compatibility with other systems. In case of doubt, the conception of ORDAT is pivotal in interpreting a product as a new version, unless ORDAT generally provides the disputable product to the licensee as a new version.

2.2 Download of patches and upgrades

Regular supply of the licensee with online software patches and upgrades to download. We will provide you with patches by request.

2.3 Troubleshooting

Analysis of reported ORDAT software malfunctions as well as consultancy concerning the evasion of the detected malfunctions. Forwarding the proven and repeatable malfunctions to ORDAT.

Provision of revised software versions free of charge in the form of patches and release versions. Should the costs of debugging in an older version prove to be uneconomical or should the bug be already fixed in the current version or be fixable in an economical way, ORDAT reserves the right to fix the bugs only in the current version.

2.4 Information service

Online access to further public notices made by ORDAT.

2.5 Type of support and means of communication

The licensee may forward problems, malfunctions, and requests to ORDAT via its [ticket portal](#). In urgent cases, the licensee may get in touch with ORDAT by telephone or by sending an e-mail exclusively to one of the addresses published at the ORDAT [support portal](#). E-mails sent to the dedicated addresses of individual ORDAT employees may not be processed.

Assistance and support are provided by ORDAT optionally by phone, e-mail or from the hotline via ORDAT [support portal](#).

2.6 Limitation of service obligation to the latest software versions

The obligation of ORDAT to supply services according to the above mentioned regulations for software products that have been revised in the meantime in form of new versions, upgrades, or patches is temporally limited to a maximum of 2 years, starting with the release of the next new version, upgrade, or patch. ORDAT informs its partners in time if a program version is no longer subject to service obligations. This notice is published on the protected website of ORDAT.

3 Services to be charged separately

During the contract period of the present support contract, ORDAT is basically ready to provide the licensee with the following additional services that will be charged separately and will not be covered by the contract rate:

3.1 Providing support for bugs caused by faulty or inappropriate use

Support in fixing bugs that are attributed to not following the instruction manuals or faulty or inappropriate handling of the software and/or data storage medium by the licensee or his employees or assigns.

3.2 Providing support for further services

The following services are not covered by this support agreement and thus, may be commissioned and charged separately:

- » Training and counselling of the users in terms of application handling.
- » Bug fixing and information desk concerning problem cases that are definitely no software bugs.
- » Expenditure for problems relating to the hardware (server, work station, printer, etc.), system software (operating system, database, backup software, etc.) and network used by the licensee, unless otherwise expressly agreed with ORDAT.
- » Expenditures caused by the negligence or intervention of the licensee or an unauthorized third party as well as by using a non-ORDAT software product.

3.3 Providing support for bugs caused by interventions

Support in fixing bugs caused by the intervention of the licensee or a third party in the data processing system or data storage medium or by connecting the data processing equipment to other devices by the licensee or a third party, particularly in terms of write access to database tables of software products supplied by ORDAT.

3.4 Providing support for bugs caused by act of violence

Support in fixing bugs that are attributed to an act of violence beyond the responsibility of ORDAT.

3.5 Counselling on applying the software

Advising the licensee on the utilization of the software application and/or in response to individual IT-specific questions.

3.6 Implementation and support of customer-specific software adjustments (customizing)

The range of implementation work embraces amongst other things the user-specific adjustments of the software, such as

- » User-specific programming of features (individual customizing) and its implementation
- » User-specific adjustment of e.g. screens, forms/documents and analyses, views, scripts, and jobs (customizing)
- » Establishment of user-specific interfaces to external systems

» Support hotline

- » Realization of data migration from old systems.

3.7 Providing support for further general debugging

Supporting the licensee in debugging and correcting software products that are not included in the present contract agreement.

3.8 Incidental and installation costs

Freight and shipping costs as well as additional installation costs, if applicable, for upgrades and patches provided to the licensee.

3.9 On-site work

On-site support by an ORDAT employee or someone on behalf of ORDAT.

3.10 Voluntariness of services mentioned in sections 3.1 to 3.8 and their compensation

Should the licensee require services from section 3, ORDAT is authorized to supply them in its sole discretion after taking the current capacities into consideration. ORDAT will inform the licensee immediately about the approval of the request on receiving it. A contractual obligation is not effective until the approval by ORDAT.

The services of section 3 are charged at the currently valid hourly rates of ORDAT. These are available to the licensee on demand.

4 Support hotline**4.1 Range of hotline services**

The licensee is entitled to the following services of ORDAT software hotline:

- » Provision of qualified personnel and a corresponding network infrastructure
- » Acceptance of fault reports, documented and reasonably described by the licensee
- » Debugging services
- » Provision of information to problem cases observed and documented by the licensee.

4.2 Following services are not supported by the software hotline

- » Customer-specific configuration of the software and the application
- » Implementation of new or so far unused features
- » Professional and operational consultation and training concerning topics related to the utilization of the application
- » Amendment of the software through the installation of updates or new software versions.

4.3 Availability

The support services mentioned in 2 and 3 shall be available to the licensee at the following times on the following days (with the exception of statutory holidays in Hesse):

Monday to Friday between 8.00 am and 5.00 pm

Furthermore, an extended service contact may be provided upon request for a limited period of time outside of the previously mentioned normal office hours.

4.4 Language

The recording of fault reports and the provision of information on problem cases are restricted to the languages German and English. Other languages may be arranged individually if necessary.

5 Licensee's obligation to cooperate

5.1 Obligation to provide information

The licensee shall, to the best of his abilities, assist ORDAT in the fulfilment of ORDAT's contractual obligations.

In the event of the licensee encountering problems in the program sequence, the licensee shall immediately provide detailed description of the problem.

Observed malfunctions shall be documented in a repeatable form and reported to ORDAT via its [ticket portal](#).

5.2 Granting access

Where necessary, the licensee shall grant ORDAT an unrestricted access to the data processing system where the software has been installed so that ORDAT can perform technical support. Alternatively, the licensee shall make necessary arrangements at its own costs to guarantee the feasibility of support services.

Support services are provided on the assumption that the licensee allows ORDAT a remote access to the utilized software free of charge and according to ORDAT's requirements.

5.3 Trained personnel

The licensee shall make personnel available for the period from fault report until fault clearance that is familiar with the system and hence, is able to describe and demonstrate the problem and grant ORDAT's service team the necessary access for fault recovery.

5.4 Data backup

ORDAT shall not be liable for data damages in connection with or as a consequence of the repair or servicing of any equipment. The licensee is fully responsible for the creation and storage of all backup data before any intervention in the system. Furthermore, the licensee is required to thoroughly and promptly test new patches and release versions. The operability of new patches and release versions shall be checked immediately using proper and professional tests and possible complaints shall be reported in writing.

6 Service fee and adjustment of the service fee

6.1 Service fee

The licensee shall pay a regular service fee agreed in the attachment of the support contract for the support services specified in section 2 of these terms and conditions. In addition, this service fee includes support services for release versions and patches or releases of the software purchased by the licensee and covered by this support agreement that have been requested by the licensee during the contract period in accordance with section 2.2 of this contract.

ORDAT's claims for payment cannot be set off by doubtful or not legally binding counterclaims of the licensee.

6.2 Separate time-based charges

The services in section 3 are not included in this flat fee, i.e. they are charged according to the amount of time involved, based on the current hourly rate of ORDAT. The current hourly fee rates are available on demand.

6.3 Extensions to order and right of objection

In the event that the licensee purchases further software products of ORDAT during the term of validity of the support contract, the present contract will be extended to these products.

6.4 Adjustment of service fee and special termination right of the licensee

- (1) ORDAT is entitled to adjust the service fee payable by the licensee for the individual software products following a notice period of three months to the end of the present contract year, with reference to the special termination right of the licensee in section (2). The notice of the adjustment of fees must be in writing.
- (2) The licensee shall remain entitled – in accordance with section (1) – to terminate the support contract or, in case of a more comprehensive agreement, the support contract regulations contained therein as such, within a period of a month after receiving the notice of the adjustment of fees. The notice of termination must be in writing, with effect from the end of the current contract year.

7 Duration, interruption and termination of the contract

7.1 Term of validity and extension

The present support contract shall be agreed for a whole calendar year. The contract extends automatically by a further term unless duly terminated by either party with a period of notice of three months to the end of the calendar year or the licensee exercises its special termination right in accordance with 6.4.

7.2 Interruption of contract or interruption in performance

7.2.1 Temporary suspension of the contract and return to support

A terminated support contract may be reactivated at a later point in time provided that

- » the licensee is a valid licensee of the software applications to be supported at the time of resumption.
- » the resumption of the support contract does not exceed the period of 18 months after the end of contract.
- » the resumption of the contract is possible in the first six months on condition that the licensee pays the incurred service fee retrospectively that would have been payable if the contract had not been terminated. From the seventh month onwards, an additional reinstatement fee is charged. It amounts to 20 % of the back payment.
- » should the support contract for obtaining and using a current ORDAT Software release be resumed after the 24th month, the software licenses must be purchased again and a new software maintenance contract must be concluded.

7.2.2 Interruption in performance as a result of outstanding payment

In the event that the licensee remains in default of payment for more than a month, ORDAT reserves the right to discontinue services. That may temporarily suspend the software service agreement including the provision of new release versions, patches and hotline services.

7.3 Termination for good reason

The contracting parties' right to terminate the agreement without notice for compelling reason shall remain unaffected by the aforesaid regulation. A compelling reason shall, in particular, be deemed to exist if the licensee

- » is in default with the payment of the remuneration by more than a month,
- » is unable to pay its debt, insolvency proceedings are applied for, instituted or rejected for insufficiency of assets, or liquidation is applied for or entered in the Commercial Register,
- » violates its essential contractual obligations, in particular the contractual restrictions on the use of the present software despite formal notice with threat of termination.

Other rights of ORDAT in such cases remain hereby unaffected.

7.4 Formal requirement

Any notice of termination must be in writing to become effective.

8 Warranty

8.1 Defects of quality

Defects of quality will be remedied by ORDAT in accordance with the present agreement on software services and the general terms and conditions. Additional defects from patches or release versions will be remedied within the contract period of the software service agreement. In addition, troubleshooting will be provided during the contract period according to the aforesaid regulations in section 2.

8.2 Expiration of the contract

In accordance with the present agreement, ORDAT is not obligated to remedy or process defects of quality or title reported after the expiration of the support contract. Warranty claims of the licensee arising from other agreements, particularly from the purchase and supply of the standard software, remain hereby unaffected.

8.3 Fraudulent intent/guarantee

In case of fraudulent intent and undertaken guarantee the statutory provisions shall apply.

8.4 Defects of title and warranties

In case of defects of title and other warranties the general terms and conditions for goods and services by ORDAT shall apply.

9 Liability

9.1 Exclusion of liability without fault

Claims for damages against ORDAT are excluded, unless they are attributed to a culpable breach of duty on the part of ORDAT, its legal representatives or vicarious agents.

9.2 Limited liability for slight negligence

ORDAT, its legal representatives or vicarious agents assume no liability for damages, with the exception of deliberate or grossly negligent conduct or culpable damages resulting from injury to life, body and health and the violation of essential contractual obligations.

9.3 Limited liability for violation of essential contractual obligations

In the event that ORDAT, its legal representatives or vicarious agents violate essential contractual obligations, liability for ordinary negligence is only limited to typical foreseeable damages at the time of the conclusion of the contract on the basis of the circumstances known at that time.

9.4 Liability in case of malice or guarantee or on the basis of the Product Liability Act

ORDAT is unrestrictedly liable for damages resulting from fraudulent conduct or deliberate concealing of a defect, as well as in case of undertaken guarantees for the nature of the supplied services, and for damages falling under the German Product Liability Act.

9.5 Tort liability

In case of liability in tort, the restrictions under section 1 to 4 shall apply mutatis mutandis.

9.6 Contributory negligence and safety obligations of the licensee

ORDAT reserves the right to raise the defence of contributory negligence against the licensee's claims. The licensee is particularly obligated to data backup and virus protection as per the current state of technology.

9.7 Liability limit

ORDAT shall not be liable for lost profit or damage, whether indirect, incidental or consequential, unless they are result of malicious intent or gross negligence.

Any liability shall be limited to the service fee payable in the contract year in accordance with the present contract per occurrence of damage.

ORDAT shall not be made liable for data recovery, unless ORDAT is responsible for the loss of data due to malicious intent and gross negligence. In case of data recovery, the licensee shall ensure that these data can be reconstructed with a reasonable amount of effort from data material held available in machine-readable form.

10 Copyrights and privacy

10.1 Principle of confidentiality

The licensee undertakes to treat all objects he receives from ORDAT or objects he gains knowledge of (e.g. software, documents, and information) that are legally protected, contain business or company secrets or are designated as confidential, confidentially – even beyond the expiration of the contract, unless these objects are publicly known without any infringement of the obligation of secrecy. The licensee shall preserve and secure information to be handled confidentially in such a way that any access by third parties is ruled out. ORDAT is also committed to treat user information confidentially and to delete customer data at the latest after the end of contract.

10.2 Necessary disclosure to a third party

The licensee shall restrict the access to the objects of the agreement to his employees or other third parties that require it for their assigned tasks. Furthermore, the licensee shall instruct these persons on the need for secrecy and shall obligate them to comply with their duty in that respect.

10.3 Obligation to disclosure

The present confidentiality obligations do not apply if the licensee is required by law to disclose the provided information.

11 Applicable law and place of jurisdiction

11.1 Binding application of German law

The contractual relationship and its execution are exclusively subject to the laws of the Federal Republic of Germany.

The aforesaid applicable law shall apply without regard to United Nations Convention on Contracts for the International Sale of Goods (abbr.: CISG).

11.2 General definition of the place of jurisdiction

The place of jurisdiction is the registered office of ORDAT if the licensee has no legal residence in Germany or has relocated his legal or habitual residence after concluding the contract to a place outside the legal jurisdiction of the Federal Republic of Germany or his legal or habitual residence is not known at the time the claim is raised.

11.3 Definition of the place of jurisdiction for certain licensees

Notwithstanding the restrictions regulated in section 2 above, the place of jurisdiction is, in any case, the registered office of ORDAT, insofar as the licensee is a merchant in terms of the German Commercial Code or a legal person or a separate estate subject to public law.

12 Data protection

It is pointed out again and the licensee hereby expressly consents to ORDAT storing, processing and using his data in its EDP system for strictly internal purposes to execute the order. ORDAT is obligated to comply with the user's data protection regulations and particularly to delete user data after fulfilment of support service.

13 Invalidity of individual clauses or unintended omissions

Should any of the provisions of these terms and conditions be or become completely or partially invalid, the contractual relationship and the validity of the remaining regulations shall be unaffected. The same shall apply if the provisions of the contract are found to be incomplete.

13.1 Severability clause

If any of the provisions of the underlying agreement or the present terms and conditions is invalid or if not all matters have been provided for, the contract parties shall agree on a substitute and legally feasible regulation that most nearly approximates the economic purpose of the void or incomplete clause.

The current state of the terms and conditions for support, as well as all the other terms in the contract and the general terms of business are published at the [ORDAT support portal](#).

Imprint

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