

General Terms and Conditions

General Terms and Conditions for software maintenance and support of LuArtX IT GmbH

§ 1 Area of application

(1) The business conditions here apply to the contractual relationships between LuArtX IT GmbH (subsequently referred to as “LuArtX IT”) and its customers, and regulates especially the transfer of software (“products”) and the concession of usage rights in compliance with § 6. They also regulate, as a supplement, the contractual relationships in terms of the individual agreements made. In the case of objections, written agreements, or written confirmations of agreements by LuArtX IT have priority.

(2) When similar contracts are concluded, the conditions here shall also apply to subsequent agreements when the submission of the declaration here is made by the customer to the version that can be called up at www.luartxit.de, even if LuArtX IT does not again point this out.

(3) Contractual proposals by LuArtX IT are non-binding – unless otherwise designated in the proposal. They become binding when signed by both sides, on written order confirmation by LuArtX IT or on the start of service provisions by LuArtX IT. LuArtX IT can demand written confirmation of verbal contract declarations made by the customer. The customer is bound for four weeks to his declarations on conclusion of a contract.

§ 2 Contractual object

- (1) Unless otherwise agreed in the contractual document, the parties agree that software maintenance refers to corrective (elimination of errors, elimination of defects), adaptive (adaptation to changed circumstances) and perfective (functional enhancements, further developments) services. It thus includes in particular the delivery of new releases and patches as well as the establishment of workarounds, where necessary.
- (2) Definition of software maintenance: Services of the service provider to maintain the usability of the software according to the description of the software in the purchase contract as well as the description for updates in the current software version and software environment approved by LuArtX IT.
- (3) LuArtX IT can assume the maintenance of non-approved software versions in special cases on a voluntary basis.
- (4) If LuArtX IT is not obliged to continue the maintenance service, LuArtX IT can make the continuation of the maintenance conditional on an increase of the remuneration.
- (5) Old versions of the software are not subject of the maintenance contract. Old versions are all versions which do not correspond to the latest delivered version of the software.
- (6) Also not subject matter of the contract are versions of the software adapted by the customer as well as software versions, which do not correspond with the release notes provided by LuArtX IT.

- (7) LuArtX IT is entitled to use third parties to perform the obligations of this contract.
- (8) The customer shall commission and install the products himself and check the usability on his system.
LuArtX IT supports the customer in this process as far as this has been agreed in writing against a separate fee. All support services in this respect, such as preparation for use, installation and proof of successful installation, shall be remunerated on a time and material basis, unless otherwise agreed in writing. If LuArtX IT (based on a separate agreement) performs the installation, the customer shall confirm its successful completion in writing.
- (9) LuArtX IT fulfils its obligations to provide the products by making them available for download by the customer in the download area of the LuArtX IT website, where updates and other software can also be downloaded.
- (10) Support as a component of the software maintenance includes telephone assistance in the event of software problems, as well as their identification, verification, resolution and establishment of workarounds, where necessary.
- (11) LuArtX IT is entitled to carry out remote diagnoses and to perform the correction of defects remotely via remote access directly at the customer's premises. The customer shall provide the necessary access for this purpose and cooperate to the extent necessary. For personal data the data protection conditions (DSGVO) provided by us shall apply.
- (12) The support does not include assistance with the installation of the software and its updates / releases. Paragraph 2, no. 8

§ 3 Corrective services

- (1) The criterion for the existence of defects of the software shall be, if there is no manufacturer's contract against payment, the description of the software in the purchase contract as well as the description for updates.
- (2) The customer shall report any defects which occur to LuArtX IT. The existence of a defect shall be demonstrated by screen shots and a description of the defect in writing. A defect shall only be recognised as a defect if it is reproducible.
- (3) A defect can be reported via the WebTicketing system, via e-mail or the hotline number provided on the homepage.
- (4) Alleged performance-related deviations shall be quantified, indicating the condition of use.
- (5) At the request of LuArtX IT the customer shall participate in the search for the cause of the error and its rectification. The customer shall provide further documentation on the defect if so requested and make his EDP available with the highest priority. The customer commits himself to carry out corrective measures by his own account and according to the instruction of LuArtX IT.
- (6) If, before or during the correction of the defect, it becomes apparent that the defect is not attributable to a software error, LuArtX IT may invoice its work according to the daily rate applicable in the price list.
- (7) LuArtX IT shall remedy the defects of the software and documentation notified to LuArtX IT as well as those known to LuArtX IT within the scope of planning for the further development of the software.
- (8) LuArtX IT reserves the right to communicate workarounds. In this case, the customer shall accept any inconvenience and additional expenses arising from this until the update is delivered.
- (9) If the software cannot be used productively due to the reported defect or if the defect leads to a crash of the EDP system, the customer shall report the defect

according to paragraph 3 number 2 and 3. In this case, the customer shall accept any inconvenience and additional expenses arising from this until the update is delivered.

- (10) For third party software, which is not produced by LuArtX IT, LuArtX IT is only obliged to procure the latest available updates and to provide them to the customer, provided that no further costs are incurred for this.

§ 4 Perfective and adaptive services

- (1) The software can be further developed at any time on the basis of market-specific suggestions or at LuArtX own discretion. The further development includes functions, functionality and the user interface.
- (2) Changes and adaptations of the software can also be incorporated into the software on the basis of a separate development order.
- (3) In the case of third-party software, para. 3, no. 9 shall apply.

§ 5 Updates / Software Releases

- (1) Further developments as well as corrections of defects according to para. 3 and para. 4 are included in software updates and software releases.
- (2) The delivery of the software updates is made according to paragraph 2, no. 9
- (3) The installation of the software is made according to paragraph 2, no. 8.
- (4) The customer is obliged to download the updates immediately and independently. Old versions as well as software versions adapted by the customer are not maintained according to paragraph 2, nos. 5 and 6.
- (5) If a change of the existing data structure occurs due to the update, LuArtX IT provides an appropriate conversion software as part of the update.

§ 6 Prices

- (1) If not otherwise agreed in writing, the prices that can be seen in the LuArtX IT provisions at the time of the order plus the statutory value added tax shall apply. Travel costs are to be additionally remunerated; travel time applies as the time to be remunerated.
- (2) LuArtX IT may replace the current prices at its own reasonable discretion with new prices after 12 months at the earliest, taking into account a notice period of 3 months. If the prices rise by more than 10%, the notice period of the maintenance contract is reduced to 2 months.

§ 7 Contract duration and cancellation

- (1) By ordering maintenance the customer automatically agrees to an indefinite maintenance contract. The maintenance contract will be extended automatically by one year.
- (2) A three-month period of notice at the end of the year must be observed in order to terminate the contract. Notice of termination must be given in writing.
- (3) All future licence purchases will be added to this contract.
- (4) The termination of the maintenance contract has no influence on the existence of other contracts.

§ 8 Warranty

(1) The existence of defects is governed only according to module description already provided by LuArtX IT. In the case of special requirements, wishes and preferences, it then concerns only an agreement on a quality, or a use provided according to the contract if this is expressly agreed in writing.

Smaller software errors do not represent a defect if the practical usability is not impaired and no deviation from an agreed quality exists.

(2) In the case of a justified complaint, the customer has the legal warranty rights with the following modifications:

1. a) In the case of a justified complaint about a defect, LuArtX IT can either choose to remedy the defect by replacement delivery of a fault-free product or by indicating a way of avoiding the effects of the defect.
- b) The customer cannot, unless there are special conditions, demand the provision of a special defect-free version of the products, but must wait till the next regular update is issued. Special conditions exist, especially when essential functions of the product are restricted.
- c) LuArtX IT is also entitled to effect a temporary removal of defects in the products by workaround solutions till this is finally remedied in the next regular update. When providing a suitable workaround, the remedy for the defect may not occur in the subsequent update.
- d) Following the indication of the defect, LuArtX IT has basically a right to at least three further attempts to remedy within a period of at least three months for the same defect. This does not apply if anything else results from the type of product, defect or other conditions.
The customer shall allow LuArtX IT at least 14 days per supplementary attempt, as long as this does not result from the type of the product or defect or other circumstances.
- e) A withdrawal by the customer from the contract due to a breach of duty on the part of LuArtX IT is excluded unless LuArtX IT is at fault in the breach of duty.

(3) The warranty rights of the customer are null and void if the customer is largely responsible for causing the defect. A significant causation of the defect by the customer is especially due to:

- Improper use
- Installation in an unsuitable installation environment
- Improperly operated or unauthorised work units or addresses within a local network or
- Use in connection with products not supplied by LuArtX IT
- Exposure to inadmissible external influences,
- Improper installation or
- Unauthorised changes to products
- whose original identification features or
- Subsequent changes to the hardware or
- operating system programs have been made

The customer bears the burden of proof that irregularities occurring are due to faults in the products and already existed before the handover. The warranty claim is excluded if he does not succeed in this.

(4) A recession on the part of the customer leads to a reversed transaction of the contract. The legal consequences are governed basically by Section 346 of the BGB.

(5) If the contract is unwound, the customer shall return or destroy all copies of the product and documentation that were issued and confirm in writing to LuArtX IT that all copies of the product and documentation issued have been returned or destroyed.

§ 9 Liability restrictions

(1) The statutory regulations shall apply without restriction in the cases of loss of life, physical injury and damage to health and to claims from the product liability law.

(2) LuArtX IT shall pay damages or replacement of alleged applications, regardless of legal reason, (e.g. from contractual commitment or quasi-contractual obligations, defects in goods or title, breach of duty and tort), only to the following extent:

1. a) LuArtX IT shall be liable without limitation for intent and gross negligence or from an accepted warranty.
- b) LuArtX IT shall be liable to the amount of the typical and foreseeable damage at the time of contract completion.
- c) In the case of a simple negligent breach of an obligation, whose fulfilment constitutes a condition sine qua non and on the fulfilment of which the customer regularly relies and whose breach jeopardises the achievement of the purpose, LuArtX IT shall be liable for typical and foreseeable damage at the time of contract completion.

(3) The liability of LuArtX IT shall be reduced when the customer is partly liable for the damages. A partial liability on the part of the customer exists when the customer has not carried out a data backup or a defence against malware according to the current state-of-the-art technology. If the co-liability of the customer outweighs that of LuArtX IT, the liability of LuArtX IT shall be excluded.

LuArtX IT shall not be liable for loss of data if the customer does not adequately secure his data by a daily backup and protect it against attacks on the system.

(4) The aforementioned limitations to liability shall also apply to the personal liability of employees, representatives and bodies of LuArtX IT.

(5) The possibility of a third party insurance does not lead to an ongoing liability as aforementioned and governed by § 5.

(6) LuArtX IT is only obliged to check the, instructions and documentation of the customer for freedom of defects when there is a written agreement to this effect.

§ 10 Period of limitation

(1) Customer claims for warranty and/or damage compensation expire after a period of one year following delivery, installation insofar as LuArtX IT is at fault or, in the case of acceptance of products which must be accepted if no consumer participates in the business.

(2) The general period of limitation of Section 195 BGB is reduced to one year.

(3) The statutory period of limitation remains valid in relation to consumers.

§ 11 Final provisions

(1) LuArtX IT shall not expressly accept the general business terms and conditions of the customer unless the validity of the terms and conditions of the customer are part of an agreement.

(2) Alterations and additional agreements shall be made in writing; this applies also to the agreement on freedom of form.

(3) LuArtX IT GmbH is entitled to visit the customer's business premises , accompanied by an expert who has been agreed with the customer, and inspect systems and programs so as to assess whether the customer complies with the provisions of this contract. Customer shall bear the costs if any violations are ascertained.

(4) Should a determination of these conditions be invalid, ineffective or cannot be implemented (or become so in the future), the effectiveness of the other provisions shall remain unaffected.

(5) Place of fulfilment is Böblingen.

(6) The place of jurisdiction shall be Stuttgart as long as the customer is a merchant, a legal person under public law or a legal person under special fund and a special place of jurisdiction is not designated. Each party reserves the right to sue at the general place of jurisdiction of the other party.

(7) German law shall apply.

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