

General Terms and Conditions of Duwe-3d AG for the Maintenance of Software

Maintenance services which Duwe-3d AG (hereinafter: *Duwe*) renders with regard to Software licensed by *Duwe* (hereinafter: *Software*) to companies and other commercial business persons (hereinafter: *Customer*) are delivered under and in accordance with these Terms and Conditions, unless *Duwe* and *Customer* agree otherwise in writing in the course of the order and the corresponding order acceptance (hereinafter: *Maintenance Agreement*).

I. Conclusion of Agreement

1. General terms and conditions of the *Customer* are applicable for *Duwe* only if and to the extent explicitly agreed by *Duwe* in writing.
2. Each offer of *Duwe* concerning delivery of maintenance services is not binding and without obligation.
3. Any amendment of or supplement to a *Maintenance Agreement* has to be in writing in order to be effective.

II. Scope of Agreement

Unless the *Maintenance Agreement* provides otherwise, maintenance will be delivered for all *Software* licensed by *Duwe* up to the effective date of said *Maintenance Agreement*. Any maintenance of additional Software Modules (as well as plug-ins of *Duwe*) may not be ordered by the *Customer* without having a *Maintenance Agreement* for the underlying Software ("Underlying License") in place.

III. Scope of Maintenance Services

1. Against payment of the agreed fix fees under section IV below *Duwe* delivers to the *Customer* for the term of the *Maintenance Agreement* solely the following maintenance services:
 - a) Software updates according to paragraph 2 below, as far as those updates are generally made available by *Duwe* or one of its licensors;
 - b) Hotline service according to paragraph 3 below;
 - c) Update of software documentation according to paragraph 4 below.
2. Software updates are made available to the *Customer* via download. *Duwe* shall apply reasonable efforts to inform the *Customer* of the availability of Software updates in advance via e-mail. With regard to these Software updates the general terms and conditions of *Duwe* on the usage rights, the use of dongles and license keys as already agreed upon in relation to the maintained Software apply accordingly. In absence of any such agreement, the respective most current general terms and conditions of *Duwe* (General Terms and Conditions of Duwe-3d AG for the Permanent Use of Software of InnovMetric Software Inc. as well as the General Terms and Conditions of Duwe-3d AG for the Permanent Use of Plug-Ins of Duwe-3d AG for PolyWorks|Inspector) apply.
3. Hotline service is rendered by *Duwe* to answer *Software* related questions of the *Customer*. Answers are given either on phone or via e-mail only concerning the most current *Software* version and only to those employees of the *Customer* with profound knowledge of the *Software* and only during working hours, which are published on *Duwe*'s website <http://www.duwe-3d.de>. Telephone hotline is offered to the *Customer* under +49 8382 27590-11, e-mail hotline under support@duwe-3d.de. Hotline service which is delivered under this section and compensated by the fix fees is limited to 24 working hours per *Maintenance Agreement* year.
4. If and to the extent a material change of functionality or the scope of application of the *Software* occurs, an updated documentation or a corresponding supplementary documentation is provided to the *Customer*, at *Duwe*'s option and as far as reasonably acceptable to the *Customer*. This update service is rendered in the same format as agreed between the parties with respect to *Software* initially licensed to the *Customer*.

IV. Fees and Payment Terms

1. Maintenance services delivered under section III above are paid by an annual fix fee. The amount of the fix fee is shown in the *Duwe* pricelist for maintenance services, which is applicable at the date of conclusion of the respective Individual Contract or the date of its extension. The amount which has to be paid for the term of the *Maintenance Agreement* period falls due in advance upon the date of conclusion respectively or the date of extension of the *Maintenance Agreement*, as applicable.

2. In case of any reinstatement of an expired, not extended *Maintenance Agreement*, the *Customer* is obliged, to pay a reinstatement fee equaling the fee which the *Customer* would have had to pay in in case the maintenance would have continued without any interruption. The amount of the re-instatement fee payment will be calculated in accordance with *Duwe's* pricelist for maintenance services, valid at time of reinstatement of the maintenance services.

V. Term of the Maintenance Agreements

1. The *Maintenance Agreement* starts with the full installation and activation of the licensed *Software* to be maintained by the *Customer* or extends in accordance with paragraph 2 below. The initial or extension term is one year each.
2. After expiration of the software maintenance services, which are included in the purchase price of the *Software* for one year, maintenance services may be extended by conclusion of a separate written *Maintenance Agreement*. Such extension will operate uninterruptedly and has duration of one year, unless agreed otherwise in writing. If the *Customer* acquires a license concerning a *Software* module in addition to already licensed underlying *Software* ("Underlying License"), the duration of maintenance prolongation of this additional module corresponds with the term of the Underlying License.
3. In case of expiration or any other termination of the *Maintenance Agreement* concerning the Underlying License, all other *Maintenance Agreements* concerning licenses of additional software modules expire as well.
4. Either party's statutory right to terminate a *Maintenance Agreement* for cause remains unaffected.
5. The *Customers'* obligation to pay the fix fee according to section IV paragraph 2 above as well as section VII and VIII below shall survive any termination or expiration of a *Maintenance Agreement*.

VI. Customers' Obligations

1. When describing, isolating, analyzing and notifying of application problems and malfunction, the *Customer* has to consult *Duwe's* trained employees as well as to follow *Duwe's* instructions.
2. The *Customer* will install immediately *Duwe's* provided *Software* updates, patches or workarounds according to section III paragraph 2 above, if this is necessary to correct, remove any defect and or issue with infringement of intellectual property or to avoid any liability or risk of *Duwe*.

VII. Limited Warranty

1. Any warranty for defect in *Software* update and *Software* documentation is limited to a re-performance of *Duwe's* obligations set forth in section III paragraph 2 and 4 above at no additional cost to the *Customer*. As far as third parties assert a claim to the *Customer* concerning infringement of intellectual property rights or copy rights by *Software* updates or *Software* documentation, exclusively the agreed indemnification provisions of the *Software License Agreement* apply accordingly. In absence of any such agreement, *Duwe's* general terms and provisions (*General Terms and Conditions* of *Duwe-3d AG* for the Permanent Use of *Software* by *InnovMetric Software Inc.* as well as the *General Terms and Conditions* for the Permanent Use of *Plug-Ins* of *Duwe-3d AG* for *PolyWorks|Inspector*) are applicable.
2. *Duwe's* liability for loss of data is limited to the typical efforts spent for the recreation of data which would have been necessary in case of an industry standard backup system reasonably reflecting the risks of *Customer's* business.

VIII. Miscellaneous

1. Every *Maintenance Agreement* with the *Customer*, its conclusion and termination are subject to the laws of Germany, to the extent these *General Terms and Conditions* for the Maintenance of *Software* do not provide otherwise. UN Sales Law (CISG) does not apply. The exclusive venue for disputes from or in connection with these agreements is Kempten (Allgäu, Germany) if the *Customer* is a merchant.
2. Should a provision of the *Maintenance Agreement* be or become invalid, the validity of this Agreement is not affected, unless the adherence to the Agreement would constitute an unreasonable hardship for one of the parties. The parties will replace the invalid provision with a valid provision which most closely resembles the intention of the parties upon formation of the Agreement.