

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 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 an additional Software module may not be ordered by Customer without having a Maintenance Agreement for the underlying Software in place.

III. Scope of Maintenance Services

1. Against payment of the agreed fix fees under section IV below Duwe delivers to 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 Customer via FTP download. Duwe shall apply reasonable efforts to inform 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.) apply.
3. Hotline service is rendered by Duwe to answer Software related questions of Customer. Answers are given either on phone or via e-mail only concerning the most current Software version and only to those employees of 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 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 software occurs, an updated documentation or a corresponding supplementary documentation is provided to Customer, at Duwe's option and as far as reasonably acceptable to Customer. This update service is rendered in the same format as agreed between the parties with respect to Software initially licensed to 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, 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, Customer is obliged, to pay a reinstatement fee equaling the fee which 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, valid at time of reinstatement of the maintenance services.

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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 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 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 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. 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, Customer has to consult Duwe's trained employees as well as to follow Duwe's instructions.
2. 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 Customer. As far as third parties assert a claim to 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.) 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 Switzerland, to the extent these General Terms and Conditions for the Maintenance Agreement 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.