

**1. Object of contract**

These general terms and conditions for maintenance apply with regard to the contractual relationships between VenturisIT GmbH (hereinafter "VenturisIT") and clients with regard to the maintenance of software products (including extensions) of VenturisIT ("software", "software product(s)"). Servicing of hardware as well as maintenance of software products from other providers is not the object of this contract.

**2. Services**

- 2.1. Pursuant to this contract, maintenance means the removal of errors and defects in the software, including documentation, in accordance with Section 4 as well as the further development of the software in accordance with Section 5.
- 2.2. If there is a change in the installation environment (software or hardware) on or with which the software is used, VenturisIT shall only be obliged to continue its maintenance if the version of the software has been released by VenturisIT for the changed installation environment or VenturisIT voluntarily takes on continued maintenance.
- 2.3. If VenturisIT is not obliged to continue maintenance in accordance with Subsection 2.2, VenturisIT may make continued maintenance dependent on an appropriate rise in the maintenance fee.
- 2.4. This maintenance agreement does not include: old versions of the software, where every version of the software which does not correspond to the latest, generally shipped version is deemed to be an old version, as well as versions of the software unilaterally changed by the client, and software which is not used in accordance with the respectively current release notes provided by VenturisIT.
- 2.5. VenturisIT is entitled to have its obligations arising from this contract provided by third parties.

**3. Prices**

- 3.1. In the absence of any other written agreement, the prices valid at the time of ordering as set out in the VenturisIT price list shall apply plus value-added tax. They are charged and fall due in advance for the period set out in accordance with the VenturisIT quotation.
- 3.2. VenturisIT may at its discretion replace the prices in force with new prices at the earliest after 12 months respectively, taking due regard of a notice period of three months. If prices rise by more than 10% as a result, the client may terminate the maintenance contract within two months.
- 3.3. With the exception of travel owed under contract, travel costs are charged separately.

**4. Elimination of defects**

- 4.1. VenturisIT will eliminate defects in the software and documentation of which it has been informed or become aware as part of its planning for the development of the software. To the extent that VenturisIT uses third party software which has not been made by VenturisIT, VenturisIT is merely obliged, in lieu of the elimination of defects, to obtain all available updates and pass them on to the client insofar as no other costs accrue. Furthermore, VenturisIT will pass on user advice. VenturisIT is entitled to carry out work for the elimination of defects remotely, i.e. by remote maintenance. In such cases the client will collaborate to the required extent, particularly by providing access. The parties undertake to comply with the applicable data privacy regulations insofar as and to the extent that personal data are affected.
- 4.2. The benchmark for the existence of defects in the software is the description of the software in the purchase contract as well as the descriptions for updates. In the event of changes to/extension of the software against payment in the meantime, the existence of defects is judged against the description of the changes/extensions in the corresponding production contract.
- 4.3. The client must report defects which occur to VenturisIT. The defects must be described and documented with the corresponding (screen) printouts, but at minimum in written form. Claimed discrepancies from performance data must be quantified, specifying the deployment conditions.
- 4.4. The client is only entitled to claim an elimination of defects if the reported defects can be reproduced or can be shown to exist in the way set out in Subsection 4.3 or otherwise through machine generated outputs.
- 4.5. In planning for the elimination of defects, VenturisIT may take account of the seriousness of the impairment through the defect and, as necessary, provide notification of workarounds until an update is issued. In this event the client must accept the inconveniences and additional expenditures arising from this until the update is supplied.
- 4.6. If the software cannot be used productively because of the reported defect or if the EDP system cannot be used because of the defect, and if the client notifies VenturisIT of this with the error report including documentation in the form set out in Subsections 4.3 and 4.4., VenturisIT will start on debugging or producing a workaround solution. In this event the client must accept the inconveniences and additional expenditures arising from this until the update is supplied.
- 4.7. If before or after the conclusion of the elimination of defects it turns out that it was not a software error, VenturisIT is entitled to bill the service provided on the basis of the per diem rate set out in the price list, and its expenses.
- 4.8. The client undertakes
  - to provide additional documents to VenturisIT on demand,
  - to make his EDP available with highest priority as required,
  - to guarantee staff support for system administration and computer operation in appropriate scope as required,
  - to make data media and peripherals available and
  - to undertake corrective measures - as required on instruction of VenturisIT and as far as possible - himself.

**5. Further development**

- 5.1. VenturisIT may at its discretion develop the software further at any time as a result of its own research or suggestions from the client or other users with regard to functionality and user-friendliness - insofar as this is not deemed to be debugging.
- 5.2. Other adaptations and changes will only be undertaken on the basis of a separate development contract.
- 5.3. To the extent that VenturisIT uses third party software which has not been made by VenturisIT, VenturisIT is merely obliged, in lieu of further development, to obtain all available updates and pass them on to the client insofar as no other costs accrue.

**6. Updates**

- 6.1. VenturisIT GmbH shall supply updates of the software as the result of program changes/extensions in accordance with Sections 4 and 5 or as the result of other program changes (e.g. further development as the result of commissions from other users) by sending the corresponding data media or making them available for download by the client in the download area for maintenance clients.
- 6.2. The client will install the updates himself. This contract does not oblige VenturisIT either to install the updates - no matter by which means - or to support the client in installation. VenturisIT is, however, prepared on the basis of a separate written agreement and against a separate fee (unless otherwise agreed, according to outlay) to undertake the installation for the client.
- 6.3. The client is obliged to take and install all updates immediately, but no later than the delivery of the following update. Subsection 2.4. remains unaffected by this.
- 6.4. If the update requires existing data to be changed, VenturisIT GmbH will supply the appropriate conversion software as part of the update.

**7. Hotline**

- 7.1. In addition to the services described in Sections 4, 5 and 6, the client may make use of telephone support from the service centre responsible for him at 1th of January 2020 on Monday to Thursday from 09:00 to 16:00 CET and Friday from 09:00 to 14:00 CET (except on public holidays applying uniformly throughout Germany and public holidays applying in Hesse). Here VenturisIT will support the client by telephone in identifying, verifying, solving or working around software problems arising. This does not comprise support with regard to the installation of the software and updates.
- 7.2. Subsection 4.3. applies accordingly.
- 7.3. If the corresponding technical prerequisites are available, VenturisIT GmbH will also undertake remote error diagnosis.

**8. Warranty**

- 8.1. The existence of errors is determined solely by the product specifications and descriptions of VenturisIT. Minor software errors are technically unavoidable and do not represent defects to the extent that the practical fitness for use is not impaired and there is no divergence from the agreed characteristics. Special requirements, wishes and ideas of the client only become an element of the contract as the result of an express written agreement.
- 8.2. In the event of a justified notification of defects, the client is entitled to the statutory warranty rights with the following restrictions:
- 8.3. VenturisIT may decide at its own discretion whether it complies with the client's demand for supplementary performance through rectification of the defect, or through replacement with a non-defective product, or through showing a possibility to avoid the effects of the defect.
- 8.4. In the absence of special circumstances, the client may not demand the provision of a special non-defective version of the software but has to wait until the next regular update.
- 8.5. VenturisIT is entitled to effect the temporary removal of defects in the software also through workarounds until the defect has been removed in one of the following regular updates. If a serviceable workaround is provided, the defect does not have to be removed already during the following update.
- 8.6. The customer must grant VenturisIT fundamentally at least three attempts at supplementary performance within a period of at least three months with regard to the same defect insofar as nothing else arises from the nature of the sales item or the defect or other circumstances.
- 8.7. The client must grant VenturisIT at least 14 days for each attempt at supplementary performance insofar as nothing else arises from the nature of the sales item or the defect or other circumstances.
- 8.8. Withdrawal of the client from the contract for neglect of duty by VenturisIT is excluded unless the neglect of duty is the responsibility of VenturisIT or the right of withdrawal arises from defects in the product.
- 8.9. If the client has used the software inappropriately, in an unsuitable installation environment, with defective software on non-approved work units or addresses within a local network, or in connection with software not supplied by VenturisIT, exposed it to impermissible external influences, improperly installed it or made unjustified changes to the software or its original identifying features, or retrospective changes to the hardware or the operating system programs, the defectiveness of the software cannot be assumed per se. In these cases the client must prove that the irregularities which have occurred are due to defects in the software and already existed when it was supplied. Absent such proof, warranty is excluded. Functional impairment of the software resulting from defective hardware or incorrect operation by the client as well as a merely negligible reductions in quality shall not be considered defects.
- 8.10. In the event of a cancellation of the contract, the client must also hand over or destroy all copies made of the software and documentation and give assurance to VenturisIT that all copies have been handed over or destroyed.

**9. Limitations of liability**

- 9.1. VenturisIT shall pay compensation for or reimbursement of wasted expenditures, regardless of the legal grounds (e.g. obligations arising from legal transactions or similar to legal transactions, material defects and deficiency in title, neglect of duty and tort) only to the following extent:
- 9.2. Liability in the event of intent and within the scope of any warranty provided by VenturisIT is unlimited.
- 9.3. In the event of gross negligence VenturisIT shall be liable to the amount of the typical damage foreseeable on conclusion of contract.
- 9.4. In the event of an ordinary negligent violation of a contractual duty, the fulfilment of which is a prerequisite for the proper execution of the contract and in the compliance with which the customer may regularly trust, and the violation of which places the achievement of the purpose of the contract at risk, VenturisIT shall be liable to the amount of the typical damage foreseeable on conclusion of contract.
- 9.5. The plea of contributory negligence remains open to VenturisIT. The client in particular has a duty to back up data and defend against malware always in accordance with the state of the art. VenturisIT shall not be liable for the loss of data if the client has not backed up his data daily as well as protected it appropriately against attacks on the system.
- 9.6. In the event of loss of life, physical injury and damage to health, and with regard to claims arising from the product liability act, the statutory provisions shall apply without restriction.
- 9.7. The above limitations of liability shall also apply with regard to the personal liability of VenturisIT's staff, representatives and organs.
- 9.8. The possibility of third-party liability insurance shall not lead to more extensive liability than provided for above and in Subsection 8.2.
- 9.9. VenturisIT shall only be obliged to examine the client's instructions and documents for errors on written agreement.

**10. Contract term**

- 10.1. The contract shall start on the first day of the month following delivery of the software and shall be concluded for an indefinite period.
- 10.2. The contract may be terminated at the end of the calendar year with a notice period of three months, but no earlier than 12 months after commencement of contract. Termination due to defects in accordance with Section 8., price rises in accordance with Subsection 3.2., as well as for cause remains unaffected.
- 10.3. Notice must be in writing.
- 10.4. The termination of this contract shall not influence the continuation of other contracts.

**11. Concluding provisions**

- 11.1. The client's general terms and conditions shall not apply.
- 11.2. Amendments and supplementary agreements shall be in writing; this also applies to this written form clause. Should a provision in these terms and conditions be or become void, invalid or incapable of implementation, the validity of the remaining provisions in these terms and conditions shall not be affected.
- 11.3. German law shall apply with the exception of international codes such as e.g. the CISG or the UN convention on the sale of goods. Place of fulfilment shall be Bad Soden/Ts. Place of jurisdiction for all legal disputes shall be Frankfurt am Main if the client is a businessman, a legal entity under public law, a special fund under public law, and a specific place of jurisdiction – such as e.g. for action for default – is not provided for by law. Each party remains free to take legal action at the general place of jurisdiction of the other party.
- 11.4. In all other respects the enclosed VenturisIT GmbH general terms and conditions shall apply unless divergent provisions have been agreed here.