

SCHEMA ST4 - General Terms and Conditions for Support of Quanos Content Solutions GmbH [2022-11]

§ 1 General

1. The elements of contract apply in the following order:
 - the offer and service description issued by Quanos Content Solutions and
 - the general support terms hereinafter
2. The general support terms provide for the rendering of the services by Quanos Content Solutions described in § 2 hereto.
3. In as far as licensee also uses general terms and conditions, these do not apply. The following support terms also apply in case that licensee has informed or informs about his own deviating terms or in as far as these terms are referred to on documents of the licensee, in particular order confirmations or invoices. Order confirmations of the licensee with deviating terms are hereby explicitly objected to.

§ 2 Services

Quanos Content Solutions renders the support services listed hereinafter to the licensor:

1. Making available the respectively latest versions of the Computer Program SCHEMA ST4 by way of Updated and Upgrades (hereinafter altogether „new versions of the Computer Program“),
2. A diagnosis and correction of reported defects after the end of the term for representations and warranties of a software license agreement with Quanos Content Solutions;
3. The recording of defects which are notified by phone.
4. Telephone counselling (Hotline) in case of user problems not caused by licensor itself.

An evaluation of the defect by phone or correction thereof is not effected; the Hotline merely serves for the purpose of recording the defect notified by the licensor and the follow-up registration in the Issue Tracking System (ITS).
5. Details of the support services are listed in the enclosed service description.
6. The rendering of support services is exclusively effected on the basis of the present agreement (including the service description) Other provisions, in particular eventual terms and conditions of the licensor do not apply.
7. Optional services: On top of the above described services Quanos Content Solutions offers additional services to licensor as listed in the Quanos Content Solutions service catalogue. These services can be ordered additionally and are object of a separate agreement in writing. This may cover e.g.:
 - Support of licensor through counselling, technical installation of the Computer Program, customer specific adaptations of the Computer Program, layout support, supporting installation, trainings and support in introducing the Computer Program.
 - Support services during individual times and/or content-wise expanded support services (e.g. expanded support times)

§ 3 Fees

1. The Support contract starts with the supply of the Computer Program or any or at any other time agreed upon. The Support for customizing of the Computer Program starts with the declaration of operational readiness by Quanos Content Solutions, unless something else has been agreed upon. The fees to be paid for the services of Quanos Content Solutions are listed in the offer plus the respectively applicable value added tax.
2. Licensor has to settle the invoice within thirty calendar days upon receipt without deduction.

§ 4 Updates, Upgrades and Correction of defects

1. The new versions of the Computer Program comprise Updates and Upgrades.
2. If and insofar Quanos Content Solutions develops new versions of the Computer Program, then Quanos Content Solutions holds the copyright or all exploitable rights therein. Quanos Content Solutions grants licensor for all the new versions of the Computer Program, which Quanos Content Solutions develops during the term of the agreement, a right of use, which is equivalent to the software license agreement. The granting of such right of use is remunerated with the fee which is due under this agreement. There is no additional royalty.
3. Quanos Content Solutions grants licensor that the new versions of the Computer Program do not infringe third party intellectual property rights. Licensor will inform Quanos Content Solutions immediately and in all detail about the allegation of such claims and subject Quanos Content Solutions with best efforts in defending thereagainst. Subject thereto, Quanos Content Solutions will in the case of such valid claims on its own costs (i) change the new version of the Computer Program so that it does not infringe third party rights, (ii) replace the new version of the Computer Program with another new version or (iii) obtain a licence from the third party. Eventual claims for damages of licensor are provided for in § 6 of this agreement.
4. Correction of damages: Quanos Content Solutions shall at its own discretion, either remove reproduceable defects, create a possibility to avoid effects of defects or correct such defects by installing an improved software version.

To the extent necessary to analyze the defect, the licensor shall grant Quanos Content Solutions access to the IT environment with the Computer Program (e.g. remote access) and also documents.

In case of a defect, Quanos Content Solutions bears the costs for the expenses for the analysis and supplementary performance, in particular transport, works and wages. Otherwise Quanos Content Solutions is entitled to demand the costs from licensor which are caused by an unjustified claim for the correction of defects, except where the missing of a defect was not recognizable for the licensor.
5. Quanos Content Solutions is entitled to engage third parties for the purpose of removing the defect; the resulting costs are borne by Quanos Content Solutions.

6. The licensor is not entitled to claim removal of defects, if
 - he does not grant Quanos Content Solutions access to the IT environment with the Contractual Program (e.g. remote access) etc., or
 - a third party engaged by him undertakes modifications to the computer program and / or carries out new versions of the computer program; or
 - does not install, or does not have installed by Quanos Content Solutions, preceding updates which facilitate troubleshooting
7. If the supplementary performance described in paragraph 4 remains unsuccessful during the reasonable period defined in the description of services, Licensor is entitled to upon its discretion withdraw from the support agreement or to reduce the maintenance fee. Withdrawal or reduction have to be declared by licensor in writing. Moreover, licensor is entitled to claim damages subject to the respectively applicable statutory conditions. Besides, claims for damages are provided for in § 6 of this agreement.

§ 5 Hotline

Licensor is entitled to an annual quota of 36 (in words: thirtysix) hours per calendar year for the use of the Quanos Content Solutions Hotline in cases of user problems not caused by licensor itself. If this quota is not used up by the end of a calendar year, then it expires at the end of this calendar year. If the quota is exceeded, then the exceeding time has to be paid for by licensor at an hourly rate of EUR 190 (in words: onehundredandninty) per hour plus respectively applicable value added tax.

§ 6 Liability

1. The liability of Quanos Content Solutions is unlimited in cases of intent, gross negligence, personal injuries and to the extent of a guarantee taken over by Quanos Content Solutions.
2. In cases of light negligence Quanos Content Solutions is only liable in case of the infringement of an essential contractual duty, the performance of which enables the due realization of the contract and on the performance of which the licensor may rely. In these cases, the liability of Quanos Content Solutions is limited to the amount of the foreseeable damage, the causing of which has to be typically expected. In total, this liability is limited to twice of the amount of the annual net maintenance fee.
3. In developing the computer program Quanos Content Solutions owes the industry average diligence. When finding whether Quanos Content Solutions has acted in default, it needs to be taken into account that software cannot technically be produced free from defects.
4. Quanos Content Solutions is not liable for the loss of data and/or functions of the Computer Program, insofar as licensor has not undertaken data backup and thereby ensured that lost data may be reproduced with reasonable effort.
5. There is no further liability of Quanos Content Solutions.
6. The above provisions apply respectively to subcontractors engaged by Quanos Content Solutions.

§ 7 Miscellaneous

1. The support contract runs until the end of the calendar year following the conclusion of the contract. In the event of a new support contract being concluded, it shall generally run from January 1 of a calendar year to the end of the calendar year. However, if the new contract is concluded during the course of the year, S. 1 shall apply accordingly. The right to terminate for cause remains unaffected. A termination requires written form for its validity.
2. The description of services enclosed as Annex is an element of the agreement. In case of any contradictions between the description of services and the content of this contract, the contract shall prevail.
3. Changes or amendments to this contract require written form to become valid. The same applies to a provision by which the written form was waived.
4. The assignment of claims resulting from this contract is only admissible with prior written consent of the respectively other party to the contract. Such consent may only be withheld for cause.
5. Licensor may only set-off or withhold with claims insofar that these claims are legally confirmed or undisputed.
6. This contract is exclusively subject to the law of the Federal Republic of Germany (however under the exclusion of the CISG – UN convention). Place of performance and exclusive place of jurisdiction for all claims from this contract or in the context thereof is Nürnberg.