

# Intershop Maintenance Support Terms for Standard Software

## (dated 1 May 2018)

### 1 Support services

Intershop provides support services according to the following terms. Support services must be requested and contracted for all Intershop standard software licenses and systems (including without limitation production, editing, development, and testing systems). The provision of support services presumes that the customer has met all contractual duties in full and on time, in particular any necessary cooperative measures and payments. The services cover maintenance and support.

Intershop may make the provision of support services conditional on the fulfillment of requirements related to data protection law. Intershop shall make an Agreement pursuant to Art. 28 para. 3 General Data Protection Regulation available for signature which must be concluded between the customer and Intershop at the latest by the start of the service time period.

Intershop shall provide support only for Intershop standard software products falling within the regular support life-cycle (hereinafter referred to as "Software"). Information on product life-cycles can be found in the [Product Support Matrix](https://support.intershop.com) at <https://support.intershop.com>.

### 2 Maintenance services

The elimination or rectification of a problem confirmed by Intershop shall be done at Intershop's discretion by delivering a fault-free software version, hotfix, patch, or by identifying a workaround (hereinafter referred to as "correction").

If Intershop offers hotfixes, patches, a new software version or software components, etc. to eliminate defects, the customer must accept these and install them on the appropriate hardware according to Intershop's instructions for installation. Furthermore, the valid version of the applicable license terms for the software shall apply. With the software version, Intershop shall deliver documentation, including instructions for installation, and support customers with the installation.

If, for justifiable reasons, Intershop determines that for technical reasons a correction cannot be achieved with a reasonable amount of effort within an appropriate period of time, Intershop will confer and agree with the customer on how to proceed.

#### 2.1 Updates

A software "update" fixes problems with a software program or augments its existing features and functions. Updates are defined as periodic updates to a major version (e.g. version 7.6 to 7.7 etc.).

Available updates and documentation for the supported Intershop Software will be provided (usually electronically) free of charge to customers in accordance with the particular license terms valid for the Intershop Software product during the time period for which the customer has contracted support services.

Support to solve problems occurring in conjunction with the use of updates shall be provided by Intershop only as described in the scope of services (Section 3). In particular, Intershop shall not be obligated to retrace or comprehend any changes contained in the Software already used by the

customer, including in regard to an update. If the customer desires such services, these must be arranged for by separate contract.

Updates can contain product improvements. Intershop reserves the right to add or remove features or functions as long as this does not pose any substantial disadvantage to the customer. The customer acknowledges that additional efforts to make individual adjustments may be necessary.

#### 2.2 Upgrades

An "upgrade" is a switch to a newer major version of the same Software. A major version is a substantially modified and augmented version of the original Software. A major version change is indicated by a change in the number before the decimal point, for example, a change from version 7.x to version 8.x.

Within the time period for which the customer has contracted support services, the customer has the right to acquire upgrades of the supported Intershop Software in accordance with the particular Intershop license terms valid for the contracted Software at a license fee reduced to 25% of the price listed on the particular price list. This is limited to the provision and licensing of the new version of the Software as agreed separately between the parties.

Support to solve problems occurring in conjunction with the use of the upgrade shall be provided by Intershop only as described in the scope of services (Section 3). In particular, Intershop shall not be obligated to retrace or comprehend any changes contained in the Software already used by the customer, including in regard to an upgrade. If the customer desires such services, these must be arranged for by separate contract.

For an upgrade issued to the customer within the scope of these support services, the terms and conditions of the Intershop Software End-user License Agreement or the license terms valid at the time of issue shall apply depending upon the type of Software issued. In addition, the General Business Terms for the sale of standard software shall apply accordingly. With the installation of the issued upgrades, the customer's right to use the previous version of the Software shall expire. The customer acknowledges that additional migration efforts are necessary.

### 3 Software support

Software support services offer assistance in solving problems that occur when using the standard Software.

#### 3.1 Technical support

##### 3.1.1 Technical questions

Intershop shall provide the following support to the customer during the time period for which the customer has contracted support services and in accordance with the terms and provisions contained herein.

Support shall be provided for:

- Installation, configuration and operation of the Software;

- Questions about administration and configuration of the operating system that are directly connected to the Software;
- Questions about configuration of the web servers supported by the software to enable their use with the Software;
- Questions about configuration and administration of components that were delivered together with the Software as long as these are directly connected to the Software;
- Use of Software features according to the documentation;
- General questions about database administration, database backup, or data recovery as long as these are directly connected to the use of the Software;
- Use of the development tools offered by Intershop (e.g. Intershop Studio); and
- Use of the software application programming interfaces.

### 3.1.2 *Standard support does not cover:*

- Help developing new functions, questions about maintenance regarding additional functions, or adjustments within the Software;
- Maintenance of the hardware on which the Software is installed;
- Help using the software of third parties.

Support regarding problems that have been caused:

- By lack of knowledge or incorrect use of scripting or programming languages;
- By using Software without following the relevant documentation, system requirements, guidelines or recommended actions that were brought to the customer's attention as part of the support services;
- By using obsolete or unsupported software versions;
- By changes made to the Software, unless these have no effect on the Software or were authorized by Intershop within the scope of support services; or
- By third systems or infrastructure that are not directly connected to the use of the Software.

## 3.2 Processing support requests

During the time period for which the customer has contracted support services, the customer shall have the option to ask Intershop technical questions and report technical problems that arise in connection with the use of Software (see Section 3.1 Technical support).

To report problems, Intershop provides an online form, an email address and telephone number. Communication can be in either German or English language. In the absence of any special advance agreement, the customer shall only provide test data without personal information to Intershop.

When a customer submits a technical request, an incident case file is created by Intershop and the customer receives an incident ID. An "incident" is the processing of a technical question or attempted solution of a technical problem regardless of the number of necessary telephone calls or emails. After receiving the report, Intershop shall attempt to reproduce the reported problem within an appropriate amount of time. If Intershop can confirm the problem,

Intershop will undertake reasonable efforts to provide a correction.

The status of the case can be called up using the incident ID when subsequent questions are asked regarding the problem.

Regardless of any other arrangements, incidents remain open until final resolution and case closure by an Intershop support employee.

## 3.3 Reaction time

The reaction time is based on the relevant service level and starts once the question has been received by Intershop. The reaction time is usually 8 business hours at Intershop. Response Time Plus is available as an option.

The reaction time has been observed if Intershop has sent a qualified response to the customer and begun working on the case within the reaction time.

## 3.4 Remote diagnosis

If Intershop is unable to reproduce a reported problem in its own environment for diagnostic purposes, the customer may grant Intershop access to the customer's system on which the reported problem occurred so that Intershop can perform remote diagnosis in an attempt to determine the cause of the problem.

Remote diagnosis shall only take place after an agreement for order data processing has been concluded and only at the express wish of the customer. This procedure allows the customer to actively monitor and understand the error analysis performed by the Intershop support engineer. The customer has the option of ending the session at any time and revoking the rights granted to the support engineer. In such a case where this should happen, the possibilities for performing diagnostics are limited and Intershop may end the work being done on the existing problem, after consulting with the customer if needed.

Intershop recommends that only encrypted and secure connections should be used when directly accessing customer systems. Using two-factor authentication is recommended for connection/remote maintenance (for example, via a VPN connection with additional RSA token or certificate for authentication).

If this is impossible for the customer or the customer follows different procedures for remote maintenance, the customer shall be obligated to make this information available to Intershop and to ensure the security of the connection. In both cases, the customer must see that Intershop's customer support is given all the necessary connection information.

Direct login into the customer's system shall only take place after prior arrangement with the customer.

If remote diagnosis via direct access is not possible, Intershop offers the customer the alternative of remote diagnosis via desktop sharing. The service provider's terms of use (e.g. Cisco WebEx) shall apply.

## 3.5 Self-help services

### 3.5.1 *Customer support webpage and "Knowledge Base"*

The customer support webpage offers services and information for the customer. Earlier requests for support can be pulled up, and new questions can be sent to Intershop's customer support.

The "Knowledge Base," available via the support webpage, is an organized list in English language of known problems and their solutions for Intershop's product range. The "Knowledge Base" can be searched according to different criteria. The database contains not only product documentation and descriptions of known problems, but also articles about installation and maintenance issues, development tips and examples, as well as answers to frequently asked questions. Intershop shall strive for keeping the support webpage and database current and continually updating and improving the content and range of the features and functions.

## 3.5.2 Intershop Commerce Insight (ICI)

(1) Intershop Commerce Insight (ICI) is a service that provides customers detailed statistical analyses of their Intershop commerce management installation(s). ICI is based on the analysis of different log files and properties files that are generated by the software. The customer makes this data available for analysis in compliance with the relevant statutory requirements.

(2) The Software has an integrated transfer mechanism to transmit the necessary information via an encrypted connection (SSH) from the Intershop installation to a secure web server operated by Intershop. ICI retrieves the data from this server and processes it.

(3) The size of the generated and transmitted log files should not exceed 1.5 GB per week in compromised form. Intershop reserves the right to stop the transmission of log files once the weekly limit has been exceeded.

(4) ICI is accessible via the internet through a separate login procedure. The customer receives access to the "ICI Basic Reports Section." ICI basic reports contain:

- Standard evaluation of the server error log files;
- Technical evaluation of the web adapter access log files;

(5) Intershop makes an effort to allow access to ICI around the clock, except during maintenance times and outages due to technical problems. The following reasons can result in this service being partially or entirely unavailable:

- ICI is undergoing maintenance;
- The customer did not properly send the log files or \*properties files to Intershop;
- The content of the available log files or \*properties files is inconsistent and thus insufficient for analysis;

In cases where a source code has been changed by the customer and this interferes with the data transfer mechanism, the reports generated by ICI may be available only in part or not at all.

(6) Customer acknowledges that this technical reporting tool may not substitute any business advice. Intershop assumes no liability in this regard.

## 3.6 Newsletter service

Intershop sends out a customer newsletter entitled "TechTalk." This English-language newsletter is sent via email as text or HTML document to the customer's appointed contact person; it is also published as an article in the "Knowledge Base." It appears four times annually and on special occasions. The newsletter contains information on:

- Products, especially concerning frequently asked questions and their answers;

- New patches, updates and upgrades;
- New Intershop products, functions, features, and additional modules;
- Product life-cycle ("end of life" / "end of support" status) for software under contract;
- Organizational news from Intershop's customer support;
- Intershop's technical training programs.

## 3.7 Authorizing contact persons

The customer has the option of appointing up to three (3) authorized contact persons who, if needed, can ask for technical advice and support from Intershop. Section 7.1 shall apply accordingly.

## 4 Optional support services

Additional services for a fee can only be provided if these have been arranged for separately. The customer acknowledges that additional payment shall be due for such services.

### 4.1 Additional service:

#### After-hours emergency support

(1) After-hours emergency support is an on-demand service that gives the customer access to an Intershop support engineer outside of normal business hours in the event of an urgent problem. Problems reported via this service have absolute priority. After-hours emergency support is only by telephone. The customer shall provide an English-speaking contact person for the communication between Intershop and the customer. To use the after-hours emergency support, the customer must state his contract number when requested to do so.

(2) After-hours emergency support encompasses emergency support for the Software. This type of assistance can only be given for cases with priority level 1 or 2:

- Priority level 1: Live system unavailable;
- Priority level 2: Error or problem that has caused substantial disadvantages to business or could lead to server failure;

The support engineer will:

- Examine the system;
- Provide support to restore failed system components;
- Support the customer in bringing the system back online;
- Analyze the reasons for the failure and give the customer recommendations for using the software in the future.

Work on solving the problem shall begin immediately after receiving knowledge of the problem by telephone.

(3) The telephone number shall remain unchanged (Section 11 Contact information"). Should any changes be unavoidable, the new telephone number will be communicated and sent to the customer.

### 4.2 Additional service:

#### Response Time Plus

Generally, all inquiries and requests are processed during business hours in the order received and responded to

within eight (8) business hours. Intershop provides an online form, email address and telephone number as a means of contact. If the customer has opted for the additional service of Response Time Plus, Intershop shall ensure an initial response as described in the following depending on the priority level.

The following priority levels and reaction times have been defined:

**Priority level 1 – Live system unavailable**

Server failure, live system unavailable

**Intershop reaction time**

Less than one (1) business hour

**Priority level 2 – Critical**

Error or problem that has caused a substantial disadvantage to business or could lead to server failure

**Intershop reaction time**

Less than two (2) business hours

**Priority level 3 – Urgent**

Problem during production that is definitively caused by malfunction; a problem that negatively affects production in the long run, but does not lead to an immediate failure

**Intershop reaction time**

Less than four (4) business hours

#### 4.3 Additional service:

##### Additional appointed contact persons

This option allows the appointment of additional authorized support contact persons (ASCI) who can draw upon technical advice and support from Intershop as needed. Section 7.1 shall apply accordingly.

#### 4.4 Additional service:

##### Extended ICI reports

(1) Customers who have chosen this option have access to extended ICI reports.

(2) Extended ICI reports contain:

- Technical reports (expanded presentation of the web adapter access log files, more extensive examination of error log files, performance statistics);
- Marketing reports (sessions, click per session, entry/exit pages, session length)
- Hosting reports (processing times, system activity)
- Web reports

(3) The size of the transmitted log files should not exceed 10 GB per week in compressed form. Intershop reserves the right to stop the transmission of log files once the customer has exceeded the weekly limit.

(4) Section 3.5.2 shall also apply accordingly.

### 5 Period of performance

(1) If not agreed otherwise in writing, the initial period of performance shall be twelve (12) months.

(2) This period shall be extended by another twelve (12) months if neither of the contracting parties terminates with a notice period of six (6) weeks prior to the end of the first twelve (12) months or the end of extended time period. Any termination must be made in writing.

(3) After the time period has expired, Intershop shall have the right to close all open incidents regardless of their status.

(4) If Intershop should decide not to continue developing, distributing, or providing support (end of support, usually 24 months after end of life) for a product for which customer has purchased support service from Intershop, Intershop shall have the right to terminate support services even during the period of performance if a notice of three (3) months prior to the end of a calendar month is given. If necessary, Intershop shall then offer to conclude a temporary contract with the customer to cover the time until final discontinuation of the support services. Intershop shall make an effort to inform the customer in due time of any such decisions.

(5) In addition, Intershop shall have the right to terminate the support service agreement without notice if good cause for termination exists. Good cause for termination by Intershop without notice includes, but without limitation:

- The sale of the Intershop license covered by the contract to a third party;
- Cessation of the right of use due to customer violation of the license terms for the software covered by the contract;
- Disclosure of any confidential information provided by Intershop for access to Intershop services to third parties or employees who are not appointed support contact persons;
- Repeated breach of the contractual duties and obligations required under the support service terms.

(6) In the event of termination by Intershop without notice as provided for in Section 5, Intershop shall retain its claim for the agreed payment amount; moreover, Intershop shall not be obligated to reimburse any payments already made. Any payments not made as a result of contract termination shall be considered compensation for damage caused by the reason for termination. Intershop and the customer reserve the right to prove the existence of a larger or lesser amount of damage.

(7) The right of the customer to terminate the contract without notice shall remain unaffected.

### 6 Remuneration

(1) The fee listed in the contract shall apply for the licensed Intershop standard software covered by the contract. The provisions under Section 1 shall remain unaffected.

(2) If the performance period is extended, Intershop shall have the right to adjust the fee. Intershop shall inform the customer of any adjustments in writing or text form at least ten (10) weeks prior to expiration of the current performance period. An adjustment shall be made in the amount of the general price increase, with the maximum being 10% p.a. If the fee is increased, the customer shall have the right to object in writing to the contract extension within four (4) weeks after being informed by Intershop.

(3) If the customer acquires additional or augmented Intershop software licenses, the amount to be paid for support services shall increase accordingly starting from the date of acquisition.

(4) The annual fee for support services, including any additional services, shall be due upon contract conclusion

and paid in advance for the respective contract year if no other agreement has been reached in writing.

(5) If the customer defaults on payment by more than thirty (30) days, Intershop shall have the right to discontinue providing support without any further notice until all claims arising from the current business relationship, plus any accumulated charges, have been paid.

(6) If the customer should default on payment, Intershop shall have right to charge default interest in the amount of 8 percentage points above the basic interest rate of the European Central Bank (ECB). Intershop reserves the right to demand a higher interest damage.

## **7 Duties and obligations of the customer**

### **7.1 Authorization of support contact persons**

The customer is obligated to appoint at least one contact person for questions regarding technical support. Support contact persons must be trained by Intershop or hold certification, meaning that each contact person has at least attended a total of five (5) days of standard training for system administrators or has successfully passed the corresponding certification exam. The cost of training and certification shall be covered by the customer. This shall also apply for any additional contact persons within the meaning of Section 4.3 of these terms. The support contact persons can be changed at the customer's discretion. The costs incurred for any resulting training or certification shall also be borne by the customer. Following contract conclusion, the customer shall receive a form from Intershop on which to enter customer contact information; this form must be completely filled out and returned to Intershop within two (2) weeks.

### **7.2 Duty of notification and confidentiality**

#### **7.2.1 Customer contact and configuration information**

The customer shall inform Intershop in an appropriate manner of all details necessary for performance of the services and shall inform Intershop in due time of any changes. Examples include:

- Contact information for the appointed support contact person
- Installation and configuration information (hardware, operating system, web servers, IP addresses).

#### **7.2.2 On-site service**

On-site services must be contracted for separately.

#### **7.2.3 Authorization of the customer**

When making use of support services, the customer shall indicate authorization by giving the contract number assigned by Intershop to the Intershop support engineer without being requested to do so; the contract number may also be entered into the intended computer field. The contract number and password for expanded web access are to be treated as confidential and specifically may not be shared with third parties. The customer shall be held liable for all damage caused by unauthorized third-party use of Intershop services occurring in connection with the customer's contract number if the contract number has been disclosed intentionally or negligently by customer.

#### **7.2.4 Unavailability of Intershop services**

If services cannot be used or problems occur in the communication between the customer and Intershop, namely in the use of email, telephone, the support website or newsletter, the customer shall be obligated to immediately inform Intershop. Should the customer fail to do so, no claim of mal-/nonperformance may consequently be asserted against Intershop.

### **7.3 Backups, passwords and the duty to cooperate**

For security purposes, the customer is required to carry out the following:

- Sufficient daily data backups of the customer's installations, in particular if problems occur or maintenance tasks are scheduled or a support engineer has advised doing so;
- Replace standard passwords with personal ones immediately after installation;
- Change or disable passwords/access permissions granted to Intershop for the purpose of remote diagnosis immediately after resolution/solution of the problem.

### **7.4 Breach of contractual duties**

Intershop shall not be held liable for any damage resulting from a failure to cooperate as described in Sections 7.1 through 7.3.

### **7.5 Confidential information**

(1) The customer shall treat all information gained from using the "Knowledge Base" (Section 3.5) and the newsletter (Section 3.6) as confidential and use it solely for internal purposes in the course of solving problems. Such information may only be shared with employees of the customer on a strict need to know basis for the purpose of solving existing problems. The customer shall not allow third parties to access this information.

(2) Intershop shall treat all information shared or made available by the customer as confidential, along with any information that becomes known to Intershop in connection with the performance of remote diagnosis or access to customer networks.

## **8 Breach of contractual duties**

To the extent that Intershop fails to perform a service in breach of its contractual duties or performs in a manner not intended by the contract, the customer may, according to the following provisions, demand compensation for any damage arising from such a breach as long as Intershop bears responsibility for the breach. Other rights may then be asserted by the customer if the customer has set an appropriate deadline for contract performance or supplementary performance that takes the particular circumstances into consideration, and if the customer has simultaneously threatened to reject any performance by Intershop after this deadline, and if the deadline has passed without results. In this case, the customer may terminate the contract in writing with immediate effect. If the customer terminates the support services, there shall still be an obligation to pay for the support services during the period from contract commencement until the date of termination.

## 9 Liability

(1) Intershop shall be fully liable for damage caused willfully or through gross negligence by Intershop or Intershop employees.

(2) Intershop shall only be liable for a simple negligence if a cardinal duty whose performance is crucial to achieving the purpose of the contract has been breached.

(3) In the case of a simple negligently breach of a cardinal duty, liability shall be limited to the type of damage that is foreseeable and typical to the contract.

(4) The parties hereby agree that the damage to be typically expected for this contract may not exceed the amount the customer has paid for support services to Intershop within the last twelve (12) months prior to the occurrence of the damage.

(5) Liability for damage atypical to the contract, consequential damages, or loss of profits shall be precluded in all cases.

(6) Statutory liability for personal injury shall remain unaffected, as shall any liability according to the German product liability act (*Produkthaftungsgesetz*).

(7) The customer shall be obligated to back data up daily. In the case of data loss, Intershop shall only be liable for the cost of necessary recovery efforts if backup copies exist. However, Intershop shall not be liable if the customer has not backed up the pertinent data on a daily basis.

(8) Damage compensation claims in connection with the contract and any other claims arising from the breach of duties that can be asserted against Intershop by the customer shall be subject to the statute of limitations twelve (12) months after any such claim comes into existence.

## 10 Miscellaneous

(1) Intershop shall have the right to compile statistical and other data regarding performance, function, and use of support services, and to use this data for security and operational management, improvement of support services, and for research & development (together performance analysis). Performance analyses shall, however, not contain content or confidential information from the customer in any form that could make the customer or other persons identifiable; performance analyses do not represent personal data. Intershop retains all intellectual and proprietary property rights to the performance analyses.

(2) The customer consents to having Intershop collect, process, and use its contact information and that of the ASCI for the purpose of contract performance and maintaining the business relationship with the customer. Contact information shall refer to the business-related information made available to Intershop by the customer, in particular, names, occupational titles, business addresses, business contact information (telephone, fax, email) for employees of the customer or third parties who have been authorized by the customer.

(3) These terms and conditions contain all the provisions agreed upon by the parties and shall replace any previous agreements, spoken or written, that were reached between the parties in reference to the subject matter of this contract.

(4) Modifications or supplements to this contract, as well as any waivers of the requirement for written form, must be made in writing and shall become valid only after signature by both parties.

(5) Offsetting shall only be permissible using claims recognized by declaratory judgment or an acknowledged claim.

(6) Should one or more of the provisions contained herein be or become invalid, the validity of the remaining provisions shall remain unaffected. The invalid claim shall be replaced by a valid one most closely reflecting the intended business purpose of the invalid one.

(7) The parties hereby agree that the law of the Federal Republic of Germany shall apply to all legal relations arising from this contract. To the extent permissible, the sole legal venue shall be Jena, Germany.

## 11 Intershop customer support

### Contact information

**Business hours:**

Monday to Friday, 9:00 am to 6:00 pm (CET),  
except on (local) government holidays in Thuringia (see  
our customer support webpage)

**Support website:**

<https://support.intershop.com>

**Customer Support:**

Hotline: +49 (3641) 50 1600

Email: [support@intershop.de](mailto:support@intershop.de)

Fax: +49 (3641) 50 1009