

# Supplementary General Terms and Conditions for the Use of SaaS (Software as a Service) for Durst Smartshop

## 1. Scope of application

- 1.1. These contract terms shall apply to the use of the software of Durst Group AG, registered with the Commercial Register of Bozen, REA-number: BZ – 91398, fiscal number: IT00848170213, Julius-Durst-Strasse 4, Brixen, 39042 Italy and its subsidiaries (hereinafter: “DURST”) in accordance with the current product description as software as a service (hereinafter: “SaaS”) or, respectively, as a cloud service offer. The software provided to the contracting partner (hereinafter: “Customer”) for use is hereinafter also referred to as “Software”.
- 1.2. “DURST” means a company which is solely either Durst Group AG or an entity controlled by Durst Group AG (subsidiary). For this purpose, “control” means ownership or control, direct or indirect, of more than fifty percent (50%) of the controlled entity’s shares or ownership interest (representing the right to make decisions for such entity).
- 1.3. These contract terms shall not supersede the License Terms and Conditions of DURST on the Surrender of Software (hereinafter: “General T&C”), but rather they are more specific provisions for the area “SaaS” in addition to the General T&C. In the event of contradictions between the General T&C, the present contract terms shall precede. Insofar as any circumstance is not regulated in the present contract terms, the General T&C of DURST shall apply. The General T&C are available on the DURST website: <https://durst-software-solutions.com/en/imprint>
- 1.4. The present contract terms shall be deemed as accepted at the latest with the use of the Software. The contracting parties agree that the general terms and conditions of the Customer shall not apply. This also applies if the Customer refers to its terms and conditions of business and/or its terms and conditions of purchase by counter-confirmations or in any other way.

## 2. Subject matter and scope of services

- 2.1. DURST operates the Software as SaaS or, respectively, as a cloud solution. The Customer is granted the right to use the Software stored and running on the servers of a service provider chosen by DURST via an internet connection for its own purposes during the term of this contract and to store and process its data by means of the Software. DURST thus grants to the Customer, for the duration of the contract, the non-exclusive, non-transferable right, which is limited to the duration agreed in the order sheet, to load the user interface of the Software for display on the screen into the main memory of the end devices used for this purpose pursuant to the contract and to make the copies of the user interface resulting thereof as well as to use the Software for the contractual purposes in accordance with the product description.
- 2.2. DURST shall provide the Customer with the Software in the version respectively agreed at the router exit of the data centre in which the server of the Software is located (“Delivery Point”) for use. For this, the Software, the computing power necessary for the use and the necessary storage and data processing space are provided by DURST, unless the services are to be provided by the service provider (see next paragraph in this regard).

However, DURST expressly is not obliged to provide the provision of the server on which the

software is stored and runs. For the purpose of using the server, the customer shall therefore conclude a separate server usage agreement with the service provider announced by DURST (hereinafter also: "Service Provider"). Furthermore, DURST shall also not be liable for establishing and maintaining the data connection between the customer's IT systems and the delivery point described.

- 2.3. DURST will point out to the Customer that restrictions and impairments of the services provided which lie outside of the sphere of influence of DURST may occur. This includes in particular actions of third parties (e.g. of the Service Provider), technical conditions of the Internet which cannot be influenced by DURST as well as force majeure. The hardware and software and the technical infrastructure used by the Customer may also influence the services of DURST.  
Insofar as such circumstances influence the availability or functionality of the service provided by DURST, this shall not affect the contractual conformity of the services provided.
- 2.4. DURST shall backup the data of the Customer at regular intervals of 3 working days on an external backup server. The Customer has the right to forward these data, insofar as technically possible, at any time for backup purposes. This process is subject to an additional charge. The price list of DURST in its respectively valid version shall apply.
- 2.5. If and insofar as the Customer processes personal data, or has them processed, on IT systems for which DURST is technically responsible, an agreement on commissioned data processing shall be concluded.
- 2.6. The scope of services governed by these contract terms includes also the Software Maintenance & Support Agreement that is subject to the Supplementary Terms and Conditions of Software Maintenance & Support Agreement for Durst Smartshop. Those are available under: <https://durst-software-solutions.com/en/imprint>

### **3. Duties of the Customer**

- 3.1. The Customer must fulfil the system requirements resulting from the product description to use the Software. For this, the Customer itself is responsible. Thus, the customer is obliged to conclude a contract with the service provider announced by DURST for the use of the server (see above point 2.2).
- 3.2. The Customer will carry out itself a regular and complete data backup, or have it carried out by a third party, and shall be solely responsible therefore. This shall also apply to documents surrendered by DURST in the course of contract processing. Insofar as the loss of data of the Customer could have been prevented by a regular and complete backup of the data – as mentioned above –, DURST shall not be liable for this in any case.
- 3.3. The Customer is obliged to report functional failures, malfunctions or functional impairments of the Software to DURST immediately and as precisely as possible in accordance with the agreements in the order sheet.
- 3.4. The Customer undertakes vis-à-vis DURST to not upload any criminal content or data, or content or data which are otherwise absolutely illegal or illegal in relation to individual third parties, and to not use any programs containing viruses or other malicious software in connection with the Software. With regard to personal data, the Customer shall remain the data controller and must

therefore always verify whether the processing of such data on the use of the Software is based on the respective legal permissions.

- 3.5. The Customer shall keep the access data made available to it secret and the Customer shall ensure that any employees to whom access data is made available, also do so. The service of DURST may not be made available to third parties, unless this has been expressly agreed by the parties.  
Type and scope of services
- 3.6. The Customer will support DURST in the provision of services to an appropriate extent.

#### **4. Data processing and data use**

- 4.1. As a technical service provider, DURST stores content and data for the Customer which the Customer enters and stores when using the Software, and DURST makes these available for retrieval.
- 4.2. For the purposes of contract performance, the Customer grants to DURST the right to be allowed to reproduce the data to be stored for the Customer, insofar as this is necessary for the provision of the services owed in accordance with this contract. DURST shall also have the right to provide the data in a backup system or, respectively, in a separate backup data centre.
- 4.3. DURST is entitled to eliminate disruptions, to make changes to the structure of the data or of the data format.

#### **5. Contract period and (premature) termination**

- 5.1. The contract between DURST and the Customer is concluded for an indefinite period of time.
- 5.2. During the agreed minimum term of contract, the contracting parties waive the right to terminate the contract. After expiry of the minimum term of contract, the contract may be terminated by both sides by observing the agreed period of notice.
- 5.3. If the Customer defaults on a payment for more than four weeks, DURST has the right to block the access of the Customer to the Software. The right to remuneration of DURST shall remain unaffected thereof. DURST is furthermore entitled to dissolve the contract with the Customer if the Customer defaults on a payment for more than four weeks in spite of a reminder.
- 5.4. In order to be effective, termination declarations require the written form. Complying with this form is a prerequisite for the effectiveness of the termination. Telefax and e-mail do not meet the written form requirement.

## **Order sheet for SaaS and cloud services**

### 1. Subject matter and contract components

1. The software as described in the order confirmation is provided for the use and storage of data via the Internet.
2. The availability of the software is 95 % per month minus the time necessary to install updates, upgrades, new releases and/or other modifications and maintenance works. The aforementioned works shall be carried out, if possible, between 9 a.m. and 6 p.m. CET and shall usually not exceed a duration of 60 minutes per interruption.
3. During the first six months ("minimum term of contract"), the contracting parties waive the right to terminate the contract. After expiry of the minimum term of contract, the contract may be terminated by both sides at the last of each month by observing a period of notice of two months. The right to an extraordinary termination shall remain unaffected hereof.
4. The remuneration agreed between DURST and the Customer shall be paid monthly within 30 days after the invoice date.