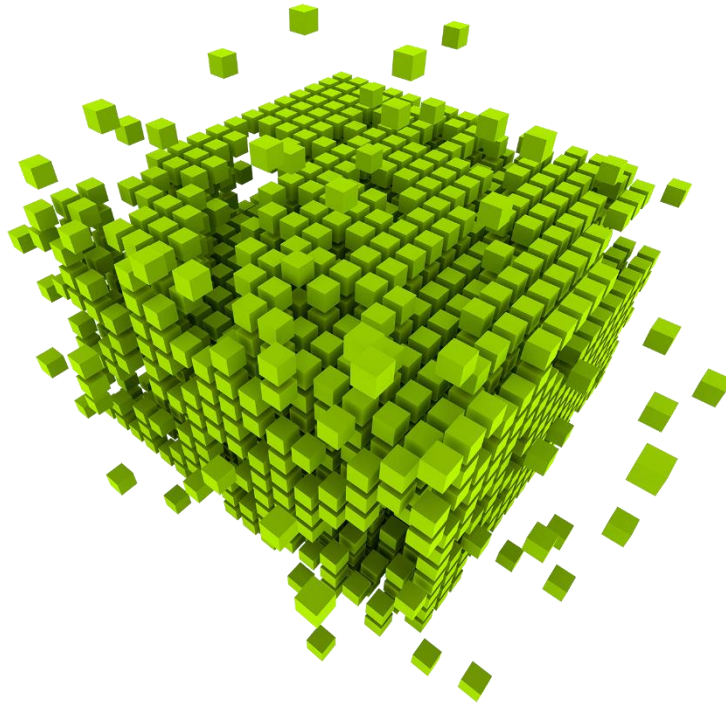


Support Terms and Conditions

iCAS Software



iTernity GmbH
Heinrich-von-Stephan-Str. 21
79100 Freiburg
Germany

fon +49 761- 590 34 - 810 sales@iternity.com
fax +49 761- 590 34 - 859 www.iternity.com

Support-Hotline: +49 761-3873 666

Support Terms and Conditions for iCAS

Preamble

WHEREAS iTernity GmbH (hereinafter referred to as "iTernity") and the Licensee have, in a separate contract, agreed the licensing of the licensed software iCAS (hereinafter referred to as "Licensed Software") by iTernity. WHEREAS the Licensee has integrated the Licensed Software into its system. WHEREAS the maintenance and support services by iTernity shall be governed by the provisions of these Support Terms and Conditions.

1. Scope of Application

These Support Terms and Conditions apply to the maintenance of the Licensed Software by iTernity and the support provided to the Licensee in handling the Licensed Software.

2. Scope of Performance

2.1. iTernity shall provide the following services to the Licensee ("Support Service"):

- technical support and advice on rectifying reproducible problems, which occur when implementing and/or operating the Licensed Software;
- support with isolating problems, which cannot be reproduced or are difficult to reproduce;
- support and advice on the installation of the Licensed Software;
- access to updates and patches free of charge;
- updates to future major versions of the Licensed Software free of charge;
- support and advice on the installation of updates.

2.2. iTernity may also use third parties to fulfil its obligations under this Clause 2.

2.3. iTernity shall act solely in an advisory and supporting function in connection with the rectification of problems. iTernity may, at its option, also render its services for dealing with a problem in the form of providing a workaround, update or upgrade.

2.4. Insofar as iTernity surrenders computer programs or other works, which can be independently protected by copyright, to the Licensee on the basis of these Support Terms and Conditions, said programs or other works shall be subject to the Licence Terms and Conditions agreed between the parties.



3. Availability of the Support Service

- 3.1. The Licensee can contact the Support Service on 365 days per annum, 24 hours per day.
- 3.2. iTernity shall only be obliged to act once it has received an adequately specified description of the fault from the Licensee.
- 3.3. iTernity shall fulfil the obligations under Clause 2 within a reasonable period.

4. Licensee's Duty to Cooperate

- 4.1. The Licensee shall be obliged to provide iTernity with all of the information, which the Support Service under Clause 2 requires and shall do so without undue delay.
- 4.2. The Licensee shall allow iTernity the possibility of providing the support services under Clause 2 - to the extent applicable - by means of remote maintenance. For this, the Licensee shall, at its own cost, provide iTernity or a third party commissioned by iTernity with remote access to the requisite systems.
- 4.3. The Licensee shall, upon request, name a sufficiently qualified contact person, who shall be entitled to carry out the necessary measures at the Licensee, to iTernity.
- 4.4. If the Licensee fails to comply with its duty to cooperate it must bear the extra cost incurred as a result.

5. Remuneration

- 5.1. The remuneration owed shall ensue from the Licensee's order.
- 5.2. In the event that the Licensee has licensed more than one CPU socket under the iCAS CPU licence model, a prerequisite for the conclusion of a Support Agreement shall be that the Support Agreement in any event covers the first licence (iCAS CPU - first). This shall apply mutatis mutandis to any extension of the Support Agreement.
- 5.3. Services that go beyond the Support Service under Clause 2, must be remunerated by the Licensee separately. iTernity shall in each case notify the Licensee of the applicable remuneration rates in advance.

6. Warranty Claims for Updates, Upgrades and New Program Versions

- 6.1. If this Agreement enables the Licensee to access updates, patches, upgrades or new program versions the warranty claims regarding said developments shall be determined accordance to this Clause 6.



- 6.2. iTernity warrants that the services under Clause 6.1 have the agreed quality. The warranty does not apply to defects due to the software having been used in a hardware or software environment, which does not meet the requirements stipulated by iTernity and known to the Licensee.
- 6.3. The Licensee must check the services under Clause 6.1 for obvious defects immediately following receipt and if there are any such obvious defects must report them without undue delay otherwise a warranty for said defects shall be excluded. The same shall apply mutatis mutandis if such a defect does not become apparent until later.
- 6.4. In the event of a defect in quality (Sachmangel) iTernity shall first have the right to supplementary performance, i.e. at its option, to rectify the defect ("subsequent rectification") or to deliver a replacement. In the event of a replacement delivery the Licensee shall, as the case may be, acquire a new status of the software unless this gives rise to unreasonable interference. In the event of any defect in title (Rechtsmängel), iTernity shall, at its option, procure a possibility for the Licensee to use the services under Clause 6.1, in a manner that is legally free from defects, or shall alter said services such that no rights of third parties are infringed any more.
- 6.5. iTernity shall also satisfy the obligation to provide subsequent rectification by providing an automatic installation routine with updates for download and by offering the Licensee telephone support to resolve any installation problems that may arise.
- 6.6. This shall be without prejudice to any rights of rescission of the Licensee. If the latter asserts any compensation or the reimbursement of expenses incurred in vain iTernity shall be liable solely in accordance with Clause 7.
- 6.7. Any claims which the Licensee has for defects shall be time-barred within one year. The limitation period shall commence at the point in time when iTernity provides the Licensee with the service under Clause 6.1.

7. Liability

- 7.1. iTernity shall not be liable for any ordinarily negligent breach of contractual obligations other than of material contractual obligations. Material contractual obligations are obligations, the performance of which characterizes the contract and which is necessary for its proper implementation. Furthermore, iTernity shall not be liable if its ordinary vicarious agents breach contractual obligations grossly negligently.



- 7.2. In the absence of intentional conduct on the part of iTernity, iTernity shall be liable only for reasonably foreseeable damage that typically occurs.
- 7.3. Liability under the German Product Liability Act (Produkthaftungsgesetz), shall remain unaffected; this also applies to the liability for any injury to life, body or health caused intentionally or negligently. If iTernity has given a guarantee iTernity shall be liable in accordance with the statutory provisions.
- 7.4. The Licensee is advised to make back-up copies of the archived data at regular intervals. In the event of any loss of data iTernity's liability shall be limited to the typical replacement costs that would have arisen had back-up copies been made regularly in a manner that is commensurate with the risk. This limitation does not apply in cases of intent or gross negligence on the part of iTernity.
- 7.5. Any subsequent claims for damages shall be time-barred within the statutory periods.
- 7.6. Unless otherwise provided above, claims against iTernity for damages arising out of a breach of duty are excluded.

8. Term of the Support Service

- 8.1. The Support Service shall have the term agreed in the Licensee's order and confirmed by iTernity in the support certificate.
- 8.2. If a Support Agreement with a fixed term has been agreed between the Licensee and iTernity, the possibility of giving ordinary notice of termination is excluded.
- 8.3. If a Support Agreement with an automatic extension (subscription model) has been agreed, the possibility of termination shall depend on the notice period stipulated in the support certificate.
- 8.4. The right to termination without notice for good cause shall remain unaffected.
- 8.5. Any notice of termination is required to be in writing.

9. Miscellaneous

- 9.1. Any amendments and additions to these Support Terms and Conditions are required to be in writing. This shall also apply to any amendment or cancellation of this Clause. Dispatch by fax or by e-mail shall also be sufficient to meet the requirement of writing.



- 9.2. The sole governing law shall be German law; the application of the United Nations Convention on Contracts for the International Sale of Goods ("CISG") of 11th April 1980 is excluded.
- 9.3. The place of performance shall be Freiburg. The exclusive place of jurisdiction shall be Freiburg provided both parties are merchants (Kaufleute) or legal entities governed by public law. iTernity shall additionally have the right to assert its own claims against the Licensee at its registered office (seat).
- 9.4. In the event that individual provisions are void, this shall invariably not affect the validity of the remaining provisions. In lieu of the void provision the contract parties shall endeavour to find a provision which legally and economically meets the objective of the contract as closely as possible. The same shall apply mutandis mutatis to the filling of any lacunae in the Agreement.



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