

## Support and Update-Upgrade conditions for Dynamic PowerTrainer®

### Preamble

(1) The following Support-and Update-/Upgrade-Conditions are valid between imc information multimedia communication GmbH (hereinafter called shortly: "imc") and her licensees (hereinafter called shortly: "customer") for rendering various support services by imc towards her customers for the software Dynamic PowerTrainer.

(2) Deviating, conflicting or additional general conditions of contract of the customer, which rule the same area like the Support-and Update-/Upgrade conditions in hand but which are contradictory in its contents, are explicitly considered to be precluded unless imc have explicitly accepted their validity beforehand in writing.

(3) The Support-and Update-/Upgrade-Conditions in hand lay down the conditions under which the customer receives support services to the software Dynamic PowerTrainer or rather obtains updates or upgrades to this software.

### § 1 Object of Contract

(1) imc is solely authorized to exploit with regard to the software Dynamic PowerTrainer® (hereinafter called shortly "Software" ), structured in modular design, easy to operate and a comprehensive software for authors yet, which enables compiling, editing, playing and administering of multimedia eLearning content. The software enables the customer to create and to use internally multimedia content, especially eLearning content and/or to distribute it to her customers or to make it available to them without payment respectively.

(2) The customer has already obtained one or more licences with the software Dynamic PowerTrainer®.

(3) It is the object of contract to render support services of various kinds by imc with respect to the customer for software components ordered and paid by the customer. The support services mainly serve to provide the customer with the current version of the software in each case or rather to remedy any technical defects should they occur.

### § 2 Support Services

(1) imc offer support and update / upgrade services. The extent of services included within this contract depends on your purchase order.

(2) Extent of services support:

This service includes support for a number of authors and administrators according to your purchase order which respect to remedy any technical defects occurring with the software. imc render telephone support within the stand-by times on the one hand and on the other hand render support via a web-interface. In addition to that this service also includes service packs to the version of software of the customer.

(3) Extent of services update / upgrade:

Update / upgrade include the following services:

- Making updates of the software available for free;
- Making upgrades of the software available for free;
- Updating of the software documentation according to the newer software versions.

Updates and Upgrades are made available by imc at their choice on CD, as an attached file via e-mail or as an online download.

(4) The following support services are not part of the contract:

- Support services which are not installed in the systems named in the offer;
- Support services after the customer has changed the source-code of the software or has made other interventions not allowed;
- Telephone support outside the stand-by time;
- Support services due to defects which can be attributed to improper use of the software or to other causes being not within the sphere of imc;
- Saving data;
- Re-securing data;
- In situ services;
- Trainings;
- Support services with respect to the compatibility of the software with other computer programs;
- Support services for customers which are not equipped with the current software version;
- Assistance in operating the software;
- Advice services.

(5) imc do not take any liability for the successful elimination of errors.

(6) An analysis of errors and elimination or rather installation of the software in situ with the customer is only made with payment which has to be stipulated before.

(7) imc are not obliged to render support services as long as the customer is in default with his contractual obligation out of the contract which has been concluded between him and imc, especially with paying the remuneration.

### § 3 Obligation of the Customer to co-operate

(1) The customer is obliged to notify imc on errors immediately after their occurrence by giving a detailed description of the error or rather of the problem occurred.

(2) The customer is obliged to co-operate to eliminate the software error when deemed necessary.

(3) Should in case imc need data or other information of the customer to render support services, the customer binds himself to provide the data and information necessary without delay.

(4) The customer binds himself not to pass on any opportunities to access to third parties.

### § 4 Error Categories and Time of Reaction

(1) The errors occurring are classified by imc according to the following categories:

- Category 1:  
Errors which prevent or seriously impair the use of the software as a whole according to its designation or in an important function.
- Category 2:  
Errors which essentially impair the use of the software as a whole in its designated use or in important functions but can be bypassed with instructions.
- Category 3:  
Errors which only slightly impair the use of the software in its designated use or in its function.

(2) Time of reaction and time to eliminate errors take, depending on their error category, as follows:

- Category 1:  
Should an error of category 1 occur, imc will confirm the error message within eight hours after its reception to the customer and eliminate the error provided this is technically possible and reasonable, within three workdays from the reception of the error message.
- Category 2:  
Should an error of category 2 occur, imc will confirm the reception of the error message within eight hour after its reception to the customer and eliminate the error using the next scheduled service pack.
- Category 3:  
Should an error of category 3 occur, imc will confirm the error message within three workdays after its reception to the customer and eliminate the error using the next scheduled service pack or update.

(3) To enable imc to categorize occurring errors in one of the three categories, the customer is obliged to describe the error as accurately as possible.

(4) The complete support services are rendered as a rule by imc from Monday to Thursday from 08.00 a.m. to 05.00 p.m. and on Fridays from 08.00 a.m. to 01.00 p.m. (Austrian public and church holidays excluded).

(5) Even if the settlement of a request for support makes a longer time of handling necessary, the customer will receive a first report within the reaction time which will inform him on the respective status and the estimated time until the error can be eliminated.

(6) Should force majeure, stoppage, lack of energy, traffic jams, directions of public authorities or similar circumstances prevent imc from fulfilling their obligations of contract, imc are free of her obligations for the period of time these circumstances prevail, especially even if these circumstances come into being only during a default already being present.

### § 5 Remuneration

(1) The support services have to be paid yearly in advance. The invoices billed by imc are due for payment at latest 14 days from their reception without any deduction and charges.

(2) Should there be a default of payment, imc are entitled to charge from the due date default interest in the amount of 6 % above the respective three months Euribor per annum. Further claims out of a title for compensation remain reserved.

(3) Furthermore the customer is obliged to compensate in case of default of payment to imc all other expenses and costs arising through his default, especially expenses for reminders and collection as well as costs for lawyers, in full. Inasmuch as imc themselves forward reminders, it will be charged EUR 5,00 for the first, EUR 10,00 for the second and EUR 15,00 for the third reminder.

(4) Should the date of payment be exceeded by more than four weeks and a single respite in writing by imc of further two weeks also elapse, imc are allowed to cancel the support contract and to charge support services already rendered according to the hourly rates being valid respectively.

(5) The customer is not authorized to hold back payments due to guarantee-, warranty or other claims or due to objection. A set-off is precluded.

(6) The customer will be informed on changes of prices at latest three months before the changes become effective.

### § 6 Duration and Cancellation of Contract

(1) This support contract concluded between imc on the one hand and the customer on the other hand starts on the day of buying the software and after having signed the support-and update-/upgrade contract pertinent to it and is concluded for an indefinite period of time. The contract can be cancelled by both of the contracting parties by observing a period of notice of three months at the end of each year of the term of contract which need not correspond to a calendar year. However both contracting parties declare to disclaim a cancellation of the support contract for the duration stated on the occasion of purchase and do mutually accept this disclaim of cancellation.

(2) The right to cancel the contract prematurely for an important reason remains unaffected. One important reason which entitles imc to cancel the support contract is especially not paying the remuneration by the customer.

(3) imc have furthermore the right to cancel the support contract concluded between imc on the one hand and the customer on the other hand, by observing a period of notice of four weeks without observing any dates for giving notice, should imc make available an upgrade for a new product version to the customer and the customer does not wish to have this free upgrade.

(4) Any cancellation has to be made in writing.

### § 7 Warranty

(1) For any flaws in the support services imc are liable according to the legal regulations.

(2) Should the customer be no consumer as stated by the KSchG, he is obliged to notice any defects occurring without delay. Should a notice of defects not be made in good time, the defect is considered to be approved and all claims of the customer for whatever legal reason are therefore precluded.

(3) The contracting parties are well aware that in keeping with the latest technological developments and even with the best possible testing it is not possible to exclude defects of the software completely and under all conditions of application. imc do not warrant a complete flawlessness of the software accordingly. A minor impairment of the serviceability of the software remains unaffected.

### § 8 Liability

(1) imc is liable for damages which arise in connection with rendering support services inasmuch as these were caused by imc on purpose or grossly negligently, within the framework of legal regulations. In cases of ordinary negligence any liability is precluded.

(2) imc are not obliged to compensate for consequential damages, damages to property, savings not gained, loss of interest or damages for claims of third parties inasmuch as an exclusion of liability in this connection is legally allowed. imc are especially not liable for damages caused by advising and /or support for the introduction of upgrades or updates of the software.

(3) imc do not take any liability for the loss of data.

(4) Anyway the liability of imc is limited in any case to the amount of 10 % of the volume of orders.

### §9 Applicable Law, Venue, Saving Clause

(1) On this support contract concluded between imc on the one hand and the customer on the other hand it is exclusively the Austrian material law applicable, including the issue of its legal accomplishment and its pre-and after effects; the Austrian and international conflict of laws rules and the UN- Convention on contracts for the international Sale of Goods (CISG) is precluded.

(2) For the decision on all disputes arising out of this support contract concluded between imc on the one hand and the customer on the other hand, in active lawsuits of imc, it is at the choice of imc the jurisdiction of the respective court competent for the jurisdiction over the subject in Graz, Austria, or it is the jurisdiction of the respective court competent for the jurisdiction over the subject at the residence/seat of the customer. For passive lawsuits of imc it is exclusively the jurisdiction of the respective court competent for the jurisdiction over the subject in Graz, Austria. For consumers § 14 of the KSchG is applicable.

(3) Changes or supplements of this support contract have to be made in writing to be legally valid. There are no verbal additional agreements.

(4) Should provisions of this support contract be or become legally ineffective, this does not affect the validity of the rest of the provisions. In this case, instead of the ineffective provision, a provision is considered to be agreed upon which comes as close as possible to the economical purpose of the ineffective provision and which is effective. The same goes for any possible gaps of the contract.