

COOLORANGE'S TERMS OF SUPPORT

Lana, 2020/12/20

Subject to your procurement of Support Services (as defined herein), these terms ("Terms of Support") shall govern coolOrange's provision of Support Services to you ("Customer").

1. DEFINITIONS

Unless otherwise defined in these Terms of Support, capitalized terms will have the meaning given below:

„**Business Days**“ are Monday to Friday CET during Normal Support Hours, except on public holidays or coolOrange company holidays (for public holidays are meant Italian holidays and for company holidays those decided by the headquarter of coolOrange);

“**Chargeable development**” is programming and developing customized solutions whose terms are specified under the following Section 2;

“**Effective Date**” is the date from which the Support Services start to be available to the Customer at the beginning of his rightful use of the Software according to the License Agreement;

„**Incident**“ means a single support question or reproducible failure of the Software to substantially conform to the functions and/or specifications as described in the User Guides or other specifications published by coolOrange;

„**License Agreement**“ means the standard coolOrange end user terms accompanying the Software(s) or a signed agreement between the Customer and coolOrange for use of the Software(s);

„**Normal Support Hours**“ are 9:00 a.m. to 5:00 p.m. CET on Business Days;

„**Resolution**“ covers a broad range of efforts to address an Incident. coolOrange reserves the right to decide if and how a Resolution may be applied and in what time frame;

„**Software**“ means any coolOrange software product, including any documentation included in, or provided for use with, such Software and any Update made available by coolOrange;

“**Support Services**” means the support services which coolOrange offers as established in these Terms of Support;

2. SCOPE OF SUPPORT SERVICES

The use of a License includes free Support Services during the testing phase and for the paid run-time period of the Software. It includes responses to questions about the **download, installation or application** of the Software.

The Support Services are to occur through emails or through the support website of coolOrange and are feeless.

Support for customizations of the Software is also feeless as long as they are performed by the Customer himself and according to coolOrange's guidelines and under the responsibility of the customer.

Any operation of assistance which involves programming and developing customized solutions on behalf of the customer, assuming responsibility for these customizations, are not included by these Terms of Support. They are defined as “Customisations” and ruled by the **General Conditions and Terms for Software Projects**. Customisations of any kind can be requested at sales@coolorange.com.

3. TERMS AND TERMINATION

The initial term for Support Services will commence on the Effective Date and shall continue for the whole duration of the rightful use of the Software as provided for in the License Agreement.

If the Customer is more than thirty (30) days delinquent in any payment obligation, coolOrange may, previous written notice to the Customer, immediately suspend performance of the obligations set forth in these Terms of Support until such delinquency is remedied.

Either Party may terminate these Terms of Support if the other party breaches a material term of these Terms of Support and such breach is not cured within thirty (30) days after written notice thereof from the terminating party.

Notwithstanding anything to the contrary herein or in the applicable License Agreement, these Terms of Support shall terminate upon expiration or termination of Customer’s license to use the Software(s).

4. INCIDENT REPORTING AND RESPONSE TIME

All reports of Incidents must be made to coolOrange via e-mail to support@coolorange.com or through the website <http://support.coolorange.com>.

The Incident report shall include the product and eventually the version thereof, the exact wording of all related error messages, a full description of the Incident and expected results and any special circumstances surrounding the discovery of the incident.

The normal response time by coolOrange is within three (3) Business Days since receiving the Incident report. By no reason shall coolOrange be liable for any response given beyond the normal response time.

coolOrange’s obligation to provide Support Services under these Terms of Support is conditioned upon the Customer (i) has subscribed a valid License Agreement which gives the right to use the Software prior to the date the Incident is reported, (ii) provides coolOrange with all reasonable assistance and data, information and materials that are reasonably necessary to solve the Incident and (iii) has installed the Software in an operating environment in accordance with the documentation provided.

5. EXCLUSION FROM SUPPORT SERVICES

coolOrange will not be required to offer Support Services due to any Incident caused by (i) any non-conformance caused by unauthorized misuse, alteration, modification or enhancement of the Software; or (ii) use of the Software that is not in compliance with the associated License Agreement or maintained in accordance with the Software documentation.

The Support Services are also excluded for any Software not purchased through coolOrange or an authorized reseller and for any third-party products including, but not limited to, installation, configuration and maintenance of third-party products.

In any case coolOrange will not be required to offer Support Services if the Incident is caused by a deliberate act, accident, neglect or misuse, modification, improper programming, a power failure or surge, an unsuitable physical or operation environment or other than normal use or causes.

6. CONFIDENTIAL INFORMATION

For purposes of these Terms of Support, Confidential Information means the non-public information provided by one party (“Discloser”) to the other party (“Recipient”) related to the business relationship between the parties, provided that such information is: (a) identified or marked as confidential at the time of the disclosure by the Discloser, or (b) if the initial disclosure is not in written or tangible form,

the Confidential Information will be so identified at the time of the disclosure and reduced to written or other tangible form, appropriately marked and submitted by the Discloser to the Recipient as soon as reasonably practicable thereafter, but no later than thirty (30) days after disclosure. The Recipient may use the Confidential Information solely for the purpose of performing activities contemplated under these Terms of Support. Any other unauthorized use shall entitle the Discloser to seek satisfaction by activating the measures available at law against the Recipient.

The Recipient shall not disclose the Confidential Information to any third party for five (5) years following the date of disclosure.

The Recipient shall protect the Confidential Information by using a reasonable degree of care to prevent any unauthorized use, dissemination or publication.

Each party will retain all right, title and interest to its Confidential Information.

7. WARRANTY

COOLORANGE WARRANTS ONLY TO CUSTOMER THAT SUPPORT SERVICES WILL BE PERFORMED IN A PROFESSIONAL AND WORKMANLIKE MANNER. OTHER THAN AS EXPRESSLY STATED HEREIN, SUPPORT SERVICES ARE PROVIDED „AS IS“. COOLORANGE MAKES NO OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY.

8. LIMITATION OF LIABILITY

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND REGARDLESS OF WHETHER ANY REMEDY SET FORTH IN THESE TERMS OF SUPPORT FAILS OF ITS ESSENTIAL PURPOSE , IN NO EVENT WILL COOLORANGE OR ITS LICENSORS OR RESELLERS OR SUPPLIERS BE LIABLE TO THE CUSTOMER FOR (i) ANY COSTS OF PROCUREMENT OF SUBSTITUTE OR REPLACEMENT OF THE SOFTWARE, LOSS OF PROFITS, LOSS OF USE, LOSS OF OR CORRUPTION TO DATA , BUSINESS INTERRUPTION LOSS OF PRODUCTION, LOSS OF REVENUES, LOSS OF CONTRACTS, LOSS OF GOODWILL, OR ANTICIPATED SAVINGS OR WASTED MANAGEMENT AND STAFF TIME; OR (ii) ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGES WHETHER ARISING DIRECTLY OR INDIRECTLY OUT OF THESE TERMS OF SUPPORT.

9. PROCESSING OF PERSONAL DATA

The Customer agrees that coolOrange will collect and process personal data as part of the Support Services under these Terms of Support. coolOrange will process and keep every personal data received under these Terms of Support in accordance to the GDPR 679/2016.

10. SURVIVAL

The following provisions of these Terms of Support survive termination: Definitions, Confidential Information, Warranty, Limitation of Liability, Processing of Personal Data, Survival, General.

11. GENERAL

Complete Agreement

These Terms of Support are hereby incorporated by reference into the License Agreement and represent the complete agreement between coolOrange and Customer regarding Support Services and supersedes any prior or contemporaneous agreements or communications or understandings, written or oral, regarding the Support Services.

If any provision of these Terms of Support is found partly or wholly illegal or unenforceable, such provision shall be enforced to the maximum extent permissible, and the remaining provisions of these Terms of Support shall remain in full force and effect. A waiver of any breach or default under these Terms of Support shall not constitute a waiver of any other subsequent waiver or default.

Language

The English language version of these Terms of Support is legally binding in case of any inconsistencies between the English version and any translations.

Governing law and competent jurisdiction

These Terms of Support are governed by the laws of Italy. Any conflict which should arise from the application or interpretation of these Terms of Support shall fall under the exclusive competence of the jurisdiction of the Court of Bolzano.

Mediation

In the event the Customer has his registered office outside of the EU all the disputes arising out of these Terms of Support shall be deferred to a mediation attempt managed by the Service of Mediation of the Chamber of Arbitration of Milan.

Arbitration

If the mediation attempt fails, all the disputes arising out of the present Terms of Support shall be settled by arbitration under the Rules of the Chamber of Arbitration of Milan by a sole arbitrator appointed in accordance with the Rules. The Arbitral Tribunal shall decide in accordance with the rules of law of Italy. The seat of the arbitration shall be Milan, Italy. The language of the arbitration shall be English.