Value Pack contract

The following contractual provisions for the Value-Pack contract are agreed between the Client

and

ColorGATE Digital Output Solutions GmbH
Große Düwelstraße 1
30171 Hannover, Germany
- hereinafter referred to as **ColorGATE** -

1. Scope

1.1. The following contract conclusively regulates the software maintenance services to be provided by ColorGATE to the client under the Value-Pack offer.

1.2 The general and standard terms and conditions of both parties do not apply in relation to this contract. This provision also applies should one of the parties not explicitly contradict the general and standard terms and conditions of the other party.

2. Object of contract

2.1 This contract is with respect to the software components to be maintained pursuant to this contract and as listed in the first invoice, of the software purchase agreement or the software rental agreement, together with any further software components (hereinafter referred to as "software components") acquired in addition during the course of the contract term and as specified in Sections 3 – 6, stipulating the maintenance services to be provided by ColorGATE. The software components shall be maintained taking into account the maintenance services rendered up to the time of the current maintenance service.

2.2 The maintenance services shall be dependent upon the respectively purchased Value-Pack as specified in Section 3.

3. Services

3.1. ColorGATE shall render the maintenance services in accordance with the specifications of "Value Pack 1", "Value Pack 365", "Value Pack 2", "Value Pack 3", "Value Pack 4", and "Value Pack 5" the precise scopes of which are published at https://www.colorgate.com/service-support/resources/value-packs/.

3.2. ColorGATE shall render the maintenance services during normal office hours, Monday through Friday, 09.00 – 18.00 hours with the exception of national public holidays and Lower Saxony public holidays as well as on 24th and 31st December of any one year.

3.3 The client shall deploy the software components in accordance with the system environment specified by ColorGATE. The minimum system requirements are eg. published at https://www.colorgate.com/requirements/.

4. Software maintenance

As part of software maintenance, ColorGATE shall provide the client with available version releases, upgrades, updates and bug fixes (hereinafter referred collectively as "program corrections").

4.1. Software updates

Software updates refers to such updates as take place within a software version number (e.g. update from version A.x. to A.y).

4.2 Software upgrades

Software upgrades refers to such upgrades as take place from one old version to a new version (e.g. upgrade from version A.x to B.x).

4.3

The delivery of the abovementioned software updates and upgrades takes place via the internet in the form of the respective object code. This contract does not encompass the transfer of the source code.

Further services shall be in accordance with the services scope published at https://www.colorgate.com/service-support/resources/value-packs/.

5. Duties of the client

5.1.

The client shall support ColorGATE in meeting the contractual services as specified in this section (sub-section 7) at own expense.

5.2

In particular, client shall provide all necessary information and all necessary hardware and operating systems in accordance with ColorGATE specification.

5.3

The client shall coordinate with ColorGATE all changes to the software or hardware environment and any changes to operating system configuration. Any such changes shall be advised to ColorGATE in writing.

5.4

Client shall provide an e-mail address for the purpose of receiving updates and information.

5.5

In the event that the client identifies any deficits in the software, it enters the obligation to report best possible such deficits to ColorGATE with an exact description of the operational sequence.

5.6

The client shall promptly investigate any program corrections and advise ColorGATE immediately of any deficits identified. § 377 HGB (German Commercial Code) applies accordingly.

5.7

In order to minimise any damages caused by any data losses, the client is obliged to perform a backup at least once per day. The backup in accordance with this regulation shall include all technical and/or organisational measures necessary to ensure availability, integrity and consistency of the IT systems including any data, software and procedures stored on the IT systems and used for processing purposes. The backup of the data has the purpose of ensuring that all such measures taken, dependent upon data sensitivity, allow the immediate or short-term re-establishment of system status, data, software or procedures after impairment is identified in availability, integrity or consistency consequent to an event causing damage.

5.6

As part of the registration process, the client shall supply truthful payment information, according the chosen payment method, such as e.g. credit card. The client is obliged to communicate changes in payment information immediately.

6. Payment

6.1.   Maintenance services

6.1.1.   The maintenance services pursuant to this contract shall be paid for as follows for the various packs:

a) "Value Pack 365" by a one-off lump sum for a 1-year contractual period,

b) "Value Pack 1" by a lump sum for one contractual year,

c) "Value Pack 2" by a one-off lump sum for a 2-year contractual period,

d) "Value Pack 3" by a one-off lump sum for a 3-year contractual period,

d) "Value Pack 4" by a one-off lump sum for a 4-year contractual period,

d) "Value Pack 5" by a one-off lump sum for a 5-year contractual period.

6.1.2.   The payments for the packs shall be made as follows:

a) "Value Pack 365" by a one-off payment in advance for the entire lump sum for the 1 contractual year,

b) "Value Pack 1" annually in advance,

c) "Value Pack 2" by a one-off payment in advance for the entire lump sum for the 2 contractual years finalised after signing of contract,

d) "Value Pack 3" by a one-off payment in advance for the entire lump sum for the 3 contractual years finalised after signing of contract,

d) "Value Pack 4" by a one-off payment in advance for the entire lump sum for the 4 contractual years finalised after signing of contract,

d) "Value Pack 5" by a one-off payment in advance for the entire lump sum for the 5 contractual years finalised after signing of contract,

to be invoiced and due within 14 days after date of posting of invoice.

6.1.3.   In the event of extension of the contract in accordance with Section 10.1 of this contract, the percentage specified in the initial contract for the entire licence value (basic product plus all acquired extensions) on the basis of the price list valid at the time of the respective invoicing for the extension. The invoicing for the prepayment of the contract extension shall take place during the last two months of the previous contractual term. The settlement of the prepayment invoices is due by latest 14 days before the start of the new contractual term, i.e. any invoices for the contract extension include the respectively current listing of the entire licence value.

6.2.   Service calls, travel and other expenses shall be paid separately whenever the client has requested the presence of ColorGATE on site. The daily rate is EUR 1,500.00 net plus travel expenses and allowances.

6.3   All payments due under this agreement are subject to value added tax at the rate valid at the time of provision of services.

6.4   The client is only then entitled to make use of a withholding right or set-off right if the counterclaim has been established to be legally valid or is not disputed.

7. Liability

7.1. ColorGATE bears unlimited liability for any damages arising from injury to life, body or health due to negligence, breach of duty by ColorGATE or negligence or breach of duty by its legal representatives or agents.

7.2 For all other liability claims, ColorGATE is only liable if a certain condition is guaranteed and if such condition does not exist as well as for intent and gross negligence also by its legal representatives or agents. ColorGATE is only liable for the culpability of other agents to the extent of liability for ordinary negligence in accordance with Section 7.3.

7.3 ColorGATE is only liable for minor negligence if an obligation is breached the provision of which is essential for the fulfilment of the contract (cardinal obligation). In the event of violation of cardinal obligations, the liability for all claims is limited to a total of EUR 50,000.00. This also applies for any loss of profits or savings. Any further liability for negligence and for other remote consequential damages is excluded.

7.4 Liability for data loss is limited to the typical re-establishment expenses as would have occurred in the case of regular and risk-appropriate production of backup copies.

7.5 The provisions set out above also apply to ColorGATE employees.

7.6 Liability under the product liability law remains unaffected (§ 14 ProdHG, German product liability law).

7.7 Any claims due to deficient maintenance services expire within one year of termination of the maintenance contract.

8. Usage rights, property rights

8.1. ColorGATE grants the client usage rights to the software corrections delivered pursuant to the fulfilment of this contract in accordance with the software purchase agreement or the software rental agreement upon which the transfer of the software is based.

8.2 The usage right to the program corrections as replaced by the programme corrections delivered subject to this contract extinguishes within two weeks. The client is entitled for archiving purposes to make one copy in each case as required under the law.

8.3 In the event that the maintenance services provided by ColorGATE infringe the property rights of third parties, ColorGATE is entitled at its own discretion to either procure at its own cost for the client the necessary usage right for the infringed rights or to adjust services such that the property rights are no longer infringed but are still compliant with the contractual agreements. The client may not derive any contractual rights from such. The client shall inform ColorGATE immediately and without delay in writing of any infringement of industrial property rights or copyrights by any product provided by ColorGATE pursuant to this maintenance contract.

9. Confidentiality

9.1. The parties undertake to treat any confidential information disclosed to them under the terms of this contract, in particular business or trade secrets of the other party, with the strictest of confidence and to neither divulge same nor exploit same in any other way. This applies to all and any non-authorised third parties, i.e. also to unauthorised staff both of ColorGATE as well as of its contractors insofar as the disclosure of such information is not necessary in order to properly satisfy its contractual obligations. In the case of doubt each

party is obliged to request the consent of the other party prior to disclosure. Furthermore, the parties are also subject to the obligation of compliance with all relevant data protection regulations.

9.2 "Confidential information" refers to any such information provided by one party to the other party in connection with this contract whether in written, oral, visual or electronic form (including software and associated documentation) and where the confidential nature of which results from the circumstances.

9.3 The following information shall not be deemed confidential information:

- Information acquired lawfully by one of the parties from a third party with which the other party has not entered a confidentiality obligation and where these third parties have in turn not gained such information by infringing property rights,

- information developed independently by one party without recourse to or use of confidential information, or

- information which is or becomes public knowledge without the fault or intervention of one of the parties.

10. Term of contract, cancellation

10.1. This contract becomes effective upon payment of the respective fees in accordance with the invoicing, registration and transmission of the key file by ColorGATE. The term of the contract for the respective "Value Pack" commences at such point in time.

The contract extends for the pack "Value Pack 1" by 1 year if not terminated 3 months prior to the date of expiry of a contract year by one of the contracting parties. The contract of "Value Pack 365" terminates after one year contractual period, without need for notice; the contract for the packs "Value Pack 2" terminates after 2, the contract of "Value Pack 3" after 3, the contract of "Value Pack 4" after 4 and the contract of "Value Pack 5" after 5 contract years.

10.2 Notice of cancellation must be in writing. This obligation for the written form is not satisfied by e-mail transmissions.

10.3 The right to extraordinary cancellation for cardinal reasons is unaffected. Should the client cancel the contract because of a cardinal reason, for which ColorGATE is accountable, ColorGATE shall proportionately refund any service fees received.

10.4. The usage right granted the client pursuant to Section 10 of this maintenance contract shall be unaffected by the cancellation of the contract.

11. Requirement of written form, court of jurisdiction and severability clause

11.1. Place of fulfilment and sole court of jurisdiction is Hannover.

11.2 This contract is subject to the laws of the Federal Republic of Germany. The UN CISG is excluded.

11.3 Any changes to and additions to this contract must be in writing. This also applies to changes to written form provisions. The written form requirement is not satisfied by e-mail transmissions.

11.4 If any provision of this agreement is or becomes invalid, the validity of the remaining provisions shall not be affected. The invalid provision shall be replaced with a provision

which best approximates the economic purpose of the invalid provision.

March 20, 2023