

KNIME.COM GMBH TERMS AND CONDITIONS FOR THE PROVISION OF SUPPORT AND MAINTENANCE SERVICES

A. Introduction

The KNIME Software (“KNIME”) is an open modular data exploration platform that enables the user to visually create data flows, selectively execute some or all analysis steps, and later investigate the results through interactive views on data and models.

KNIME and some of its extensions are owned and released by KNIME GmbH (Germany) and available for download under the GNU General Public License (GPL) Ver. 3 (see <http://www.knime.org/downloads/license>).

KNIME.com GmbH, Technoparkstr. 1, 8005 Zurich, Switzerland (“KNIME.com”) is authorized to provide support and maintenance services in relation to KNIME.

B. Scope of application

KNIME.com provides support and maintenance services (“Services”) exclusively on the basis of these Terms and Conditions for the provision of support and maintenance services (“T&C”).

By placing an order for Services, a customer (“Customer”) restates, accepts, agrees and acknowledges that the provision of Services is subject to these T&C.

The T&C (together with the order confirmation) constitute the entire agreement between the Customer and KNIME.com regarding the contractual terms applying to the provision of Services. KNIME.com is not bound by any other statements relating to the Services.

General terms and conditions and other contractual documents of the Customer are expressly waived and excluded. This waiver and exclusion applies even if general terms and conditions or other contractual documents of Customer were incorporated into an order of Customer, or otherwise referenced or notified to KNIME.com.

C. Offers, acceptance and coming into force of contracts

KNIME.com’s offers are not binding and may be modified or revoked at any time.

Any contract with KNIME.com enters into force only upon acceptance by KNIME.com. Orders of Services by Customers are deemed to be offers for the conclusion of a contract. KNIME.com expresses its acceptance of an order by issuance of an order confirmation (“Confirmation”).

D. Services

a) Scope and categories

KNIME.com distinguishes different categories of Services. The scope of the Services provided under the applicable category is described in the Confirmation.

b) Consultancy services and error diagnosis

KNIME.com provides assistance related to problems in the use or operation of KNIME and error-diagnosis. These Services are provided via e-mail. The maximum number of Customer requests (“Calls”) included in the Services is set forth in the Confirmation.

A Call may address unexpected behavior of KNIME during general usage or installation on which the Customer wants to consult KNIME.com. KNIME.com further provides analysis of errors (an error is a non-conformity of KNIME which prevents KNIME from performing a function described in the documentation) and suggestions for possible work arounds.

c) Maintenance related services

KNIME.com may, at its sole discretion, provide (via download) certain patches for KNIME.

d) Services limitations

Services may only be requested by qualified staff competent in operating KNIME. Services are rendered only for the KNIME installation on the site mentioned in the Confirmation, and only in relation to the version of KNIME and the extensions and the operating system listed in the Confirmation.

E. Customer obligations

Customer shall:

- Keep a log file with log level “DEBUG” (the default setting in KNIME).
- Provide KNIME.com with the above log file, if needed for error diagnosis. KNIME.com will treat the log file as confidential information.
- Provide KNIME.com with a complete list of installed extensions in KNIME, if requested.
- Log all notified KNIME errors and deficiencies with:
 - (a) type/description of the error;
 - (b) the time the error was discovered; and
 - (c) actions that have been made to prevent the error.

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- Keep a copy of the workflow with the data with which an error has occurred, in order to reproduce the problem.
- Be responsible for reproducing the KNIME errors to enable KNIME.com to analyze and correct such errors.

F. Other benefits: discount on training fees

A Services subscription entitles the Customer to a discount on training fees as indicated in the Confirmation. The training is provided at KNIME.com's offices in Zurich. Training sessions need to be agreed upon in advance and are subject to availability.

G. Compensation

Customer shall pay KNIME.com the support and maintenance fee. The fee varies according to the subscription category chosen and is set forth in the Confirmation.

The fee is per support term of a year and a flat and non-refundable fee.

A non-utilization of Services or benefits (discount on training) during a support term results in forfeiture and does not entitle to a carrying over.

The fee is payable in advance.

KNIME.com may adjust any of its fees with effect for later support terms.

Compensations and prices stated are exclusive of VAT and other applicable charges, taxes, duties or fees, which will be invoiced separately and each of which shall be paid by Customer additionally.

H. TERM

The Services are rendered for a support term of one year. The start date is indicated in the Confirmation.

There is no automatic renewal. If Customer wishes to further obtain Services, the subscription needs to be renewed.

Notwithstanding the above, KNIME.com may immediately terminate by written notice the contract if Customer defaults in its payment obligations or materially breaches its other obligations.

I. Warranty

KNIME.com warrants that Services are performed in a professional manner and by qualified personnel. KNIME.com does not assume an obligation to deliver any particular results or deliverables. If KNIME.com fails to conform with this service warranty, KNIME.com will use com-

mercially reasonable efforts to re-perform the affected Service at no charge to Customer. The warranty period shall be ninety days, calculated from the date on which services were rendered, or on which patches were made available to Customer. Customer shall provide KNIME.com with prompt written notice of any warranty claim prior to the expiration of the warranty period. Any such notice shall identify the details of the non-conformity.

KNIME.com confirms that it has not received any notice of a claim of infringement of third party rights by the Services and that no action for any such infringement has been instituted against Knime.com; and that to its best knowledge and belief, there are no rights of third parties which could be infringed by the Services. KNIME.com, however, cannot and does not warrant that the Services (or KNIME) do not infringe rights of third parties.

Except as expressly provided above, KNIME.com makes no representations or warranties of any kind or nature, express or implied, and expressly excludes any further representations and warranties.

Any rights and remedies of Customer other than the ones set forth above are expressly excluded. In particular, but not limited to, Customer waives rights, if any, to reduction of compensation, to rescission, and to the bringing in of a third party. KNIME.com shall not be liable for any damages, costs or (third party) claims arising from its failure to conform with a warranty.

J. Limitation of liability

KNIME.com is liable for damage caused by KNIME.com with intent or gross negligence.

Any other liability of KNIME.com, including but not limited to liability for damage caused by slight negligence, and any liability for direct, incidental, indirect or consequential damage, loss of profit, anticipated savings, loss of data, business interruption, loss of goodwill or delay damage, is expressly excluded to the broadest extent permitted by law.

K. Work products

KNIME.com shall be the owner of and possess all copyrights and other rights in all work products that are related to or result from the Services (collectively "KNIME.com Work Products"), including, but not limited to, program code (including both source code

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and object code), documentation, specifications, logic, design, reference examples and test environment. Knime.com grants Customer a non-transferable, non-exclusive, world-wide license to use for the internal needs of Customer those KNIME.com Work Products that KNIME.com makes available to the Customer.

L. Confidentiality

Each party acknowledges that all information about the other party's internal affairs, business plans, and business practices as well as data received from the other party are confidential and may constitute a business or other secret (collectively "Confidential Information"). Each party agrees to treat as confidential and to hold in trust and keep secret the other party's Confidential Information. Each party shall take precautions not less than those employed to protect its own proprietary and confidential information to maintain the confidentiality of the other party's Confidential Information.

M. Applicable law and place of jurisdiction

These T&C and the contractual relationship between KNIME.com and the Customer shall be subject to Swiss Law, under exclusion of the United Nations Convention on Contracts for the International Sale of Goods. Exclusive place of jurisdiction shall be Zurich/Switzerland. KNIME.com reserves the right to take legal action before the courts of the Customer's domicile or before any other competent court.

N. Export control

The export of products (e.g. hardware, software, systems) which are subject to export restrictions imposed by the Division for Import and Export of the Swiss Federal Department of Economic Affairs or by corresponding foreign authorities, such as of the USA, is prohibited. The Customer shall comply with any such export restrictions.