



Terms and Conditions for Support Services

To ensure that DornerWorks provides its customers with services of the highest quality while also ensuring the consistency of its business, the following standard terms and conditions will be applicable to all sales of subscription and per-incident support services by DornerWorks unless DornerWorks specifically agrees in writing otherwise.

1. Parties. In this document, “DornerWorks” means DornerWorks, Ltd., a Michigan corporation, and “Purchaser” means the entity or person purchasing subscription or per-incident support services from DornerWorks.
2. Application. These Terms and Conditions apply to all sales of subscription-based or per-incident support services (“Services”) by DornerWorks to Purchaser. Purchaser acknowledges and agrees that these Terms and Conditions are incorporated in, and are a part of, each quotation, purchase order, invoice, release, requisition, work order, services agreement, and any other document, whether expressed orally, in written form, or via electronic commerce, relating to the sale of Services by DornerWorks to Purchaser (these communications are collectively referred to as the “Contract Documents”). Nothing in any Contract Document that conflicts with any provision of these Terms and Conditions shall be effective unless it is specifically approved in a writing that makes specific reference to the conflict by a duly authorized DornerWorks representative (meaning a DornerWorks officer with the authority to sign contracts on behalf of the corporation or some other person designated in writing by such an officer). Any Contract Document submitted by Purchaser to DornerWorks indicating Purchaser’s intention to purchase Services will be deemed to constitute a confirmation and acceptance of these Terms and Conditions, even if the Contract Document states terms in addition to or different from these Terms and Conditions. Any execution by DornerWorks of any Contract Document submitted by Purchaser in connection with the purchase of Services does not constitute acceptance of, or agreement to, any terms and conditions in addition to or different from these Terms and Conditions but will constitute only acknowledgment of receipt of the document. In addition, the acceptance of delivery by Purchaser of Services from DornerWorks will constitute a course of conduct constituting Purchaser’s agreement to these Terms and Conditions, to the exclusion of any additional or different terms and conditions.
3. Services. Upon acceptance of Contract Documents, DornerWorks will provide support services on DornerWorks hypervisor products or related technologies for the applicable Service Plan, as described on the following online webpage: [<http://dornerworks.com/services/xilinxxen/xen-zyng-distribution-support>] (“Service Plan Support Page”). DornerWorks reserves the right to change the support services provided and/or products covered under a Service Plan at any time, by posting updates to the Service Plan Support Page. For any updates that affect Purchaser’s Service Plan, DornerWorks will notify Purchaser of the update via the electronic mail address last registered by Purchaser with DornerWorks at the time of the update.
4. Limitations.
 - a. Support Incidents. A Support Incident is a specific, discrete problem whose origin can be isolated to a single cause. DornerWorks will make reasonable efforts to resolve a Support Incident but does not guarantee that Support Incidents will be resolved. DornerWorks, in its sole discretion, will determine what constitutes a Support Incident and whether the Support Incident is resolved. Generally, a Support Incident is resolved when Purchaser receives one of the following: (a) information that resolves the problem; (b) information on how to obtain a software solution that will resolve the problem; (c) notice that the problem is caused by a known, unresolved issue; (d) information that identifies the problem as being resolved by upgrading to a newer release of the supported product; or (e) notice that the problem has been identified as a hardware equipment issue.

- b. Subscription: An annual subscription is for one year, beginning on the effective date of the contract between DornerWorks and the Purchaser and renewing for an additional year if Purchaser delivers payment to DornerWorks for the next year before the end of a year. A subscription is for a single "Seat". A Seat is a single individual. A subscription ID will be issued for a single email address and single phone number. All Services associated with a Seat will be performed only for the single individual associated with the subscription ID. The Purchaser may change the individual associated with a subscription ID without DornerWorks' consent only at the time of renewal. Changes to the individual associated with a subscription ID during course of a subscription, before renewal, may only be done at DornerWorks' sole discretion and with DornerWorks' written consent.
 - c. Response Times. DornerWorks will make reasonable efforts to respond to a service request within a reasonable time or within the response time described under an applicable Service Plan, whichever occurs first. All response times are measured in accordance with the Service Plan's Hours of Operations described on the Service Plan Support Page.
 - d. Assistance. Purchaser shall provide DornerWorks access to Purchaser information, systems, and software ("Purchaser Information"), and resources such as workspace, equipment, network access, and telephone connections ("Purchaser Resources") as reasonably required by DornerWorks in order to provide the Services. Purchaser understands and agrees that the completeness, accuracy of, and extent of access to, any Purchaser Information and Purchaser Resources provided to DornerWorks may affect DornerWorks' ability to provide Services, and if reasonable access to Purchaser Information and Purchaser Resources is not provided, DornerWorks will be relieved from providing any Services dependent upon such access. Purchaser will obtain any third party consents necessary to grant DornerWorks access to the Purchaser Information and Purchaser Resources that are subject to the proprietary rights of, or controlled by, any third party, or which is subject to any other form of restriction upon disclosure.
5. Exclusions. Unless otherwise specified in the Contract Documents, DornerWorks will not provide support services relating to problems or issues arising from (a) the use or modification of a supported product in a manner for which the supported product is not intended to be used or modified; (b) third-party products or technologies and their effects or interactions with a supported product; and (c) use of a computer system that is incompatible with a supported product, or other issues not within the scope of the support services described in the Contract Documents.
6. Changes to Contracts. Once a contract has been made between DornerWorks and Purchaser, no change to the contract will be effective unless the change is approved in writing by both parties.
7. Contract Cancellation. Purchaser may not cancel a contract without giving DornerWorks at least 30 days written notice signed by a duly authorized representative of Purchaser. Cancellation of a subscription contract shall entitle the Purchaser to a refund of no more than 50% of the remaining value, computed as the proportion of time remaining on the subscription contract as a fraction of the total duration of the subscription contract multiplied by the actual price paid by the Purchaser for the subscription. No refund shall be issued for cancellation of a per-incident contract.
8. Terms of Payment. Services do not begin until payment is received in full. Per-incident service terminates upon resolution as described in section 4.a. Support subscription services terminate at the end of the subscription period unless payment for renewal is received before the expiration date. All charges are exclusive of Taxes. Purchaser will pay DornerWorks an amount equal to any Taxes arising from or relating to this Agreement or an applicable Order Form which are paid by or are payable by DornerWorks. "Taxes" means any form of sales, use, value added or other form of taxation and any fines, penalties, surcharges or interest, but excluding any taxes based solely on the net income of DornerWorks. If Purchaser is required to withhold or deduct any portion of the payments due to DornerWorks, Purchaser will increase the sum payable to DornerWorks by the amount necessary so that DornerWorks receives an amount equal to the sum it would have received had Purchaser made no withholdings or deductions.

9. Limited Warranty; Disclaimer of Other Warranties. DORNERWORKS MAKES NO WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO OR IN ANY WAY RELATING TO THE SERVICES, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

IN NO EVENT WILL DORNERWORKS BE LIABLE OR RESPONSIBLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES, OR FOR EXPENSE OCCASIONED BY THE USE OF ALLEGEDLY DEFECTIVE SERVICES, WHETHER BASED ON BREACH OF WARRANTY OR CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE,.

10. Confidentiality. Purchaser understands that DornerWorks makes no guarantee regarding confidentiality. If Purchaser desires confidentiality, a separate Non-Disclosure Agreement is required.
11. Intellectual Property. Any intellectual property developed as part of the Services (design files, artifacts, prototypes, etc.) is the sole property of DornerWorks. If Purchaser desires to retain intellectual property rights, a separate Design Services Agreement is required. Notwithstanding anything to the contrary contained in this Agreement, the ideas, methods, concepts, know-how, structures, techniques, inventions, developments, processes, discoveries, improvements and other information and materials developed in and during the course of any Services may be used by DornerWorks, without an obligation to account, in any way DornerWorks deems appropriate, including by or for itself or its clients or customers.
12. Trademarks. The trademarks, logos, trade names, and service marks (“Marks”) displayed on DornerWorks content are the property of DornerWorks or of other third parties. The Purchaser is not permitted to use these Marks without prior written consent of DornerWorks or of such third party that may own the Mark.
13. Copyrights. DornerWorks either owns the copyright and related intellectual property rights in DornerWorks content or has obtained the permission of the owner of the copyrights and related intellectual property rights to make it available to the Purchaser for the purposes described herein. Purchaser may not reproduce, modify, sell, distribute, or create derivative works based on DornerWorks-owned content unless Purchaser has been specifically authorized to do so by DornerWorks or, with regard to any third-party content, by the third-party owners.
14. Recruitment of Employees. Except with the express written consent of the president of DornerWorks, Purchaser shall not, directly or indirectly, for a period commencing on the first date of a DornerWorks employee or subcontractor starting work on a project for Purchaser and ending one year after the employee or subcontractor has completed working at or for Purchaser (the “Restrictive Period”), induce or attempt to induce any such person or company to terminate his or her or its relationship with DornerWorks or to enter into an employment or subcontractor relationship with Purchaser or another business that is in a business relationship with Purchaser. If any employee or subcontractor of DornerWorks is hired as an employee or subcontractor by Purchaser during the Restrictive Period, Purchaser shall pay DornerWorks, upon DornerWorks’ demand, 20% of that employee or subcontractor’s base yearly billing rate.
15. Equal Employment Opportunity. DornerWorks and its subcontractors shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.
16. Indemnification. Purchaser shall defend, indemnify, and hold harmless DornerWorks, its employees, officers, directors, agents, and other representatives from and against any and all claims, demands,

actions, debts, liabilities, judgments, costs, and attorney's fees arising out of (i) product liability claims relating to any actual or alleged negligence of Purchaser or any actual or alleged defect in Services purchased by Purchaser; and (ii) Purchaser's breach of any of its duties or obligations under any contract with DornerWorks.

17. Force Majeure. The foregoing paragraph notwithstanding, neither party shall be liable to the other party for delays or nonperformance of a contract occasioned by acts of God, public enemies, civil disobedience, governmental regulations or decrees, labor disputes, unavailability of materials, equipment failure, strikes, fires, accidents, or any other causes, whether or not of the kind enumerated in this provision, that are beyond such party's reasonable control. If performance by either party to a contract is delayed due to any of the foregoing causes, the delay shall not be deemed a breach of the contract, and the contract shall remain in full force and effect. If it appears that performance by either party to the contract will be delayed due to any of the foregoing causes, the party shall promptly notify the other party in writing stating the cause of the delay and its expected duration and shall use commercially reasonable efforts to carry out performance as soon as reasonably possible.
18. Disputes and Remedies. Any disputes between Purchaser and DornerWorks that the parties cannot resolve themselves will first be submitted to the Dispute Resolution Center of West Michigan in Grand Rapids, Michigan, and then if necessary to a court of competent jurisdiction sitting in Grand Rapids, Michigan. The foregoing notwithstanding, DornerWorks shall have the right to pursue equitable, interim, or provisional relief from a court of competent jurisdiction located in Grand Rapids, Michigan to avoid irreparable injury or to vindicate the intellectual property rights of DornerWorks.

Any delay by DornerWorks in enforcing any of the provisions of a contract shall in no way be considered to be a waiver of the right to thereafter enforce such provisions.

Any and all rights and remedies conferred upon DornerWorks under a contract shall be cumulative and in addition to, not in lieu of, any other or further rights and remedies available at law or in equity.

19. Notices. All notices required to be given or made by DornerWorks to Purchaser shall be given or made to Purchaser at the address designated by Purchaser in writing. All notices or payments required to be given or made by Purchaser to DornerWorks shall be given or made to DornerWorks at the following address:

DornerWorks, Ltd.
3445 Lake Eastbrook Blvd SE
Grand Rapids, MI 49546

20. Governing Law. Any contract between Purchaser and DornerWorks shall be governed by and construed in accordance with the laws of the State of Michigan.