

Windowmaker Support

INCIDENTS - TERMS & CONDITIONS



Definitions

"Windowmaker" means Windowmaker Software Ltd
"Customer" means the company or entity named as the customer in the details
"Application" means the request for support services
"Acceptance" is when our support options staff communicate a reference number to the Customer
"Both of us", "each of us", "either of us", "neither of us", refers to the Customer and to Windowmaker

1. Provision of Services

1.1. Overview

Windowmaker will provide the services described in the service description which the Customer selects. Windowmaker may amend a service description from time to time. The Customer agrees to use the Services on the terms and conditions set out in this Agreement.

1.2. Acceptance

No application for services to be provided is binding until accepted by Windowmaker. Windowmaker may accept any application either in writing (including email), or by telephone.

2. Products Supported

2.1. Eligible Products

Only products that are published by Windowmaker, properly registered, validly licensed, and unaltered ("Software") are eligible for support.

2.2. Minimum Specification

Services will not be provided where the Software is used with less than the minimum system configuration recommended by Windowmaker.

2.3. Removal of Supported Products

The support services cover all Windowmaker products except those older than Windowmaker 5.500

3. Performance of Services

3.1. Standards

Windowmaker follow generally accepted industry standards and practices in carrying out the services.

Windowmaker give no warranties other than as set out within this agreement and all other warranties are excluded.

3.2. Events outside Reasonable control

If an event beyond reasonable control prevents the Customer or Windowmaker from:

- performing an obligation in whole or in part; or
- performing it on time (except an obligation to pay an invoice), the Customer and Windowmaker must:
 1. give the other promptly a notice describing the nature of the event and an estimate of the delay; and
 2. take all commercially reasonable steps to end the event as quickly as possible, and preferably within 30 days; and
 3. resume performance of the obligation as soon as possible after the event ends

The Customer and Windowmaker are not liable for the non-performance and while the event continues the obligation is suspended.

4. Provision of Information

The Customer must provide Windowmaker with up to date, accurate and complete configuration and topology information concerning their computer system(s) and network(s) if asked to do so. Windowmaker reserves the right to refuse to provide services to the Customer at any time if, in Windowmaker's sole

discretion,

- Windowmaker determines that your computer and network(s) configuration and topology(ies) are not supportable by Windowmaker; or
- the Customer fails to provide the requested information; or
- the Customer has provided insufficient information for Windowmaker to progress the issue

5. Rights Arising

5.1. Bug fixes and other support software made available

Windowmaker retain ownership of any bug fixes, workarounds, patches, beta fixes and builds, and other software that Windowmaker make available in the course of providing the support services and only give the Customer a licence to use them. The Customer must use any of the software in accordance with:

- the end user licence agreement or other licence agreement governing our product for which the software is provided; or
- the end user licence agreement packaged with the software or any terms expressly set out in writing by us if the software is not provided for a specific product of ours; or
- the following restrictions if no licence agreement is packaged with the software:
 - the software may not be reverse engineered, de-compiled or disassembled to the extent this restriction is permitted by law; and
 - the software may not be loaned, leased, sold, or otherwise distributed to another user; and
 - to the maximum extent permitted by law the software is provided 'as-is', without warranty of any kind; and
 - Windowmaker may terminate the Customer's use of the software if the Customer does not comply with these restrictions.

5.2. Company information

The Customer gives Windowmaker the permission to use their technical information for problem resolution, internal troubleshooting, product functionality enhancements and fixes, and in any descriptions of problems or solutions to problems that Windowmaker may store and subsequently distribute. Windowmaker will not identify the Customer or publish the Customer's confidential information to any other company.

5.3. Feedback

Both parties are free to use any suggestions, comments or other feedback the Customer or Windowmaker give the other concerning any confidential information, code or other released or unreleased software or hardware. Neither party can disclose the source of the feedback without the other's consent.

6. Fees and Payment

6.1. Payment

The Customer agrees to pay within the time stated, Windowmaker's fees described in each support services description.

6.2. Taxes

Windowmaker's quoted fees and expenses exclude VAT which is payable in addition and only apply to customers in United kingdom and Northern Ireland.

7. Duration, Termination & Amendment

7.1. Duration

This agreement continues for the period described in the services description, unless earlier terminated, as set out here. Incidents

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purchased are valid for a period of two years, and shall lapse if unused within that period. Charges for unused incidents are not returnable to the Customer.

7.2. Ending the agreement

The Customer can terminate this agreement at any time by giving Windowmaker 30 days written notice.

Windowmaker may suspend the provision of services, or at Windowmaker's option, terminate this agreement if the Customer does not pay any undisputed amount that has been outstanding for more than 30 days.

The Customer or Windowmaker can terminate this agreement if:

- there is a material breach or default of any obligation by the other under this agreement or support services description; and
- the breach or default is not remedied within 30 days of receiving notice of it.

7.3. Consequences of termination - agreement

If this agreement is terminated by either party with or without cause:

- the Customer must pay Windowmaker all monies due under this agreement
- unused incidents cannot be carried forward and will expire on termination

8. Liabilities

8.1. Limit

If Windowmaker's negligence or breach of this agreement contributes to any loss or damage the Customer suffers, then to the full extent permitted by law:

- Windowmaker is not liable for loss of profits, business interruption, loss of business information, economic loss or any other indirect, incidental, consequential or special loss or damage; and
- Windowmaker's total liability for any other damage is limited to 100% of the amount actually paid by the Customer to Windowmaker for the services which gave rise to the claim.
- Windowmaker's liability to the Customer for loss or damage of any kind is reduced to the extent that the Customer contributed to the loss or damage.

8.2. Indemnity

The Customer agree to indemnify us in respect of any claims, whether of damages, costs or otherwise, against us, which arise as a result of their use of Services for the benefit of any third party to the extent that any such claim exceeds the limit of liability, set out in clause 8.1

8.3. Continuation after termination

These limitations continue after this agreement has ended

9. Confidentiality

9.1. What is confidential information

Confidential information means: information marked as confidential, or which ought in the circumstances surrounding the disclosure or in the nature of the information, ought in good faith be treated as confidential

Confidential information does not include:

- information developed independently by the Customer or Windowmaker; or
- information known before this agreement was entered into, or becomes publicly available subsequently; or
- information that is received from another source that can reveal it lawfully

9.2. Use of confidential information

Each party can disclose the other's confidential information on a need to know basis, and subject to the confidentiality obligations of this Agreement to:

Employees; contractors; employees or contractors of our affiliates; legal and financial consultants; a court, if required subject to a court order, provided that they promptly give the other notice of the requirement. Both parties must not disclose the confidential information to anyone else without the other's prior written consent.

9.3. Safety measures

Each party must safeguard the other's confidential information as securely as they protect their own confidential information

9.4. Duration

The obligations on a piece of confidential information continue for 5 years after the piece has been disclosed, even if this agreement has been terminated.

10. General Matters

10.1. Entire agreement

The agreement between the Customer and Windowmaker with respect to the services consists solely of these terms and conditions and the service description applicable to the support services which the Customer purchase.

The conditions on any purchase order or other form submitted by the Customer cannot override this agreement or apply to the services provided under it.

10.2. Notices

All notices under this agreement must be in writing and signed by an authorised person.

They may be:

- delivered to the address for notices last notified by the addressees (they are taken to be received at the time of delivery or, if delivery was outside business hours, on the next business day); or
- posted to the address for notices last notified by the addressee; or
- faxed to the fax number for notices last notified by the addressee (they are taken to be received at the time shown in the transmission report as the time the whole fax was sent).

Notices take effect from the time they are received unless they specify a later time.

10.3. Assignment of rights

The Customer cannot assign any rights or obligations under this agreement to anyone else without Windowmaker's prior written agreement. Windowmaker may use sub-contractors to perform the services which the Customer purchases.

10.4. Variation of rights

The Customer and Windowmaker can only vary this agreement by agreeing in writing.

10.5. Waiver of rights

A condition of this agreement, or a right created by it, is only waived when the Customer or Windowmaker do so in writing.

A waiver of a breach of this agreement does not waive any other breach.

10.6. Validity of conditions

If any part of a condition in this agreement is unenforceable, it is taken to be modified to remove the unenforceable component. The rest of the agreement is not affected by this modification.

10.7. Compliance with Laws and Governing law

The Customer and Windowmaker must comply with all applicable laws and regulations.

The Customer agrees to comply with all applicable international and national laws that apply to the export and import of software.

This agreement is governed by English law. The Customer and Windowmaker agree to take legal proceedings over this agreement only in the English courts.

Any proceeding must be started within 2 years from the date a right or claim first arose.

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APPENDIX I – Frequently Asked Questions on INCIDENTS

What is support?

Windowmaker provides support for its products in the form of single support incidents or in multi packs. You will need to establish whether you have a no-charge entitlement to these incidents, if not, you may need to purchase them. To find out, write to help@windowmaker.com or speak with your account manager. You can also refer to the Help file in the program and the Frequently Asked Questions (FAQs) on our website for self-help support resources.

What defines an 'incident'?

Any contact by a customer to our support team whether by phone, email or fax to resolve an issue with the software, to answer a query regarding the software or to report a problem with the expectation of a 'fix' is an incident. An incident is defined as a single support issue and the reasonable effort(s) needed to resolve it. A single support issue is a problem that cannot be broken down into subordinate problems. If it can be broken down into subordinate problems, each subordinate problem shall be considered a separate incident. An incident may require multiple contacts and off-line research to achieve final resolution. The time spent in delivering these solutions is independent to the amount you will be charged.

Am I guaranteed a solution?

While our support professionals will endeavour to resolve your issue, Windowmaker cannot guarantee to resolve all issues due to the diversity of our customers' computer configurations. You may request to close a case before it is resolved; however the chargeability is at the discretion of Windowmaker.

Who defines what constitutes an acceptable solution to the problem?

The Support Professional will agree upon the definition of the problem with you when you raise the support incident. The incident will be marked as 'Solution sent' after the support professional has delivered one or more suggested solutions to you. You are expected to come back to the support team within a certain period of time if the suggested solution did not work. If we do not hear to the contrary from you, we will assume that the solution was satisfactory. After the specified number of days and reminders, the case is 'Closed'. The time spent in delivering these solutions is independent to the amount you will be charged. If the support professional is unable to deliver a solution, you will be notified and the case will be closed as unresolved. The chargeable status of an unresolved case will be at Windowmaker discretion.

Can I request to re-open a closed incident?

Yes. Incidents may be re-opened within 90 days from their closure provided the issue and the circumstances of the issue are the same as were tackled in the original incident.

What happens if I have a bug?

You can inform Windowmaker of errors in the program (bugs) and errors in the documentation by email or using the [Report an issue](#) form on the website. This will not affect the number of no-charge support incidents you are entitled to and will not be charged. The classification of a bug is at Windowmaker's discretion. However if an error is found whilst a Windowmaker engineer has been working or investigating a support issue, then, this will result in the use of a paid incident.

Is there anything that Support Incidents do not cover?

- Customer proposals for product features
- Onsite support
- Data setup / customisation
- Reports customisation
- Training
- Root cause analysis
- Products out of support lifecycle. This includes all products older than Windowmaker 5.500. To see if your program is supported, please write to help@windowmaker.com or contact your nearest Windowmaker office.

How many people can submit incidents?

For the primary purpose of the Support agreement, we define your contacts into two contact types as follows:

- Primary Contact – This is one person who is responsible for ensuring that your obligations under this agreement are performed.
- Additional Contacts – The additional contacts (if required by you) are defined by the Primary Contact and are eligible to receive the service elements in the entire agreement.

The Primary Contact will manage your process for submitting incidents and is responsible for establishing a process for controlling the submission of incidents.

You are responsible for all use (and mis-use) of any access numbers or passwords provided to you as a prerequisite for the provision of the Services.

How long will my incidents last?

- 2 incidents which come bundled with the Bronze WUP package will expire at the end of the WUP period. Unused incidents cannot be carried forward to the next WUP period.
- 24 incidents come bundled with the Silver WUP package. 2 incidents are available for use every month. Unused incidents cannot be carried forward to the next month. Unused incidents of the last month before Silver WUP expiry cannot be carried forward to the next WUP period.
- Unlimited number of incidents come bundled with Gold WUP. These are available until the validity of the Gold WUP.
- Incidents purchased independent of WUP will lapse at the end of two years if left unused.

Will I be able to see what my incidents were used for?

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Yes, a monthly statement will be sent out to all customers who have used support in the particular month. A support statement can also be provided on a specific request from a customer.

Can I get my money back on unused incidents?

No, there is no policy of refund on 'unused' incidents.

Will I have to do anything to help with the problem resolution?

You may be asked to perform problem determination activities as suggested by us. Problem determination activities may include performing network traces, capturing error messages and collecting configuration information. You may also be requested to perform problem resolution activities including providing us remote control access, changing product configurations, installing new versions of software or new components, or modifying processes.

Can I do anything to prevent problems occurring?

We consider it prudent practice to fully back up systems at least every 24 hours. A failure to do so significantly decreases the opportunities for you to mitigate any harm or damage arising from an irregularity in your system's operations or any harm or damage that might result as a consequence of the provision of support services. You are responsible for implementing procedures necessary to safeguard the integrity and security of software and data from unauthorised access and to reconstruct lost or altered files resulting from catastrophic failures. We may be able to assist in reconstructing data files in the absence of sound backup procedures but results cannot be guaranteed and these activities will be considered a separate and distinct billable service. You are also expected to have adequate anti-virus protection for your systems and take due care of the hardware and network. Windowmaker will not be responsible for these.

What if I need support after I have used up my incidents? Or if I do not have a valid WUP?

- You can easily buy additional Incidents. Contact your account manager who will arrange to send you an order form. The rates shall be according to the "WINDOWMAKER TECHNICAL SUPPORT" table above in this document
- You can upgrade to a higher plan that includes more free incidents e.g. Silver or Gold

If you do not have a valid WUP, please contact your account manager or write to us at info@windowmaker.com

More questions? Write to us at info@windowmaker.com or speak to your account manager.